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UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
BALLSTON BUILDING NO. 3, 4015 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22203

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UNITED STATES DEPARTMENT OF THE INTERIOR

WASHINGTON, D. C. 20240

Secretary of the Interior Cecil D. Andrus

Office of Hearings and Appeals -- David B. Graham, Director

Office of the Solicitor ---------- Leo Krulitz, Solicitor

INDEX-DIGEST

January - December 1977

This index-digest covers all the published and all the important unpublished decisions and opinions of the Department of the Interior for the period from January 1 through December 31, 1977, rendered in the Office of Hearings and Appeals, Ballston Towers, Building No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203 and in the Office of the Solicitor, Interior Building, 18th and C Streets, N.W., Washington, D. C. 20240.

Decisions and opinions cited as appearing in 84 I.D. are published and copies may be obtained by subscription from the Superintendent of Documents, U. S. Government Printing Office, Washington, D. C. 20402. Other decisions and opinions are unpublished and copies may be obtained from the Office of Hearings and Appeals or the Office of the Solicitor as provided in 43 CFR Part 2.

Editor: Vera E. Burgin; Editorial Assistant: Betty H. Perry;
Compositors: L. Lynne Dillard, Diane M. Garrison
--1978

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IBIA	-	Interior Board of Indian Appeals
IBLA	-	Interior Board of Land Appeals
IBMA	-	Interior Board of Mine Operations Appeals
M	-	Solicitor's Opinion
OHA	-	Office of Hearings and Appeals
SEC.	-	Office of the Secretary

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TABLE OF OPINIONS REPORTED

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BOTH PUBLISHED AND UNPUBLISHED

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R. M. Barton v. Rogers C. B. Morton, et al., Civil No. 9692, D. N.M. Dismissed with prejudice, December 20, 1972; no appeal.

R M. Barton, 4 IBLA 229; 5 IBLA 1 972)

R. M. Barton v. Rogers C. B. Morton, et al., Civil No. 932[illegible]. N.M.

R. M Barton v. Rogers C. B. Morton, et al., Civil No. 9415, D. N.M. Actions consolidated. Dismissed with prejudice, December 20, 1972; no appeal.

Eugenia Bate, 69 I.D. 230 (1962)

Katherine S. Foster & Brook H. Duncan, II v. Stewart L. Udall, Civil No. 5258, D. N.M. Judgment for defendant, January 8, 1964; rev'd., 335 F. 2d 828 (10th Cir. 1964); no petition.

Battle Mountain Co., A-29146 (January 31, 1963)

Battle Mountain Co. v. Stewart L. Udall, Civil No. 64-29, D. Ore. Per curiam decision, 255 F. Supp. 382 (1966); rev'd., 385 F. 2d 90 (9th Cir. 1967); cert. denied, 390 U.S. 957 (1968).

Bay Construction Co., Inc., et al., IBCA-77 (November 30, 1960)

Bay Construction Co., Inc. et al. v. U.S., Ct. Cl. No. 302-60. Dismissed with prejudice.

Robert L. Beery, et al., 25 IBLA 287; 83 I.D. 249 (1976)

J. A. Steele, et al. v. Thomas S. Kleppe in his capacity as Secretary of the Interior, & U.S., Civil No. C76-1840, N.D. Cal. Suit pending.

Estate of Julius Benter, IBIA-70-5 (November 17, 1970), 1 IBIA 59 (1971)

George B. Brazie, individually & as the Executor of the Last Will & Testament of Julius Benter, Deceased v. Rogers C. B. Morton, Civil No. S-2360, E. D. Cal. Stipulated dismissal with prejudice.

Sam Bergesen, 62 I.D. 295
Reconsideration denied, IBCA-11 (December 19, 1955)

Sam Bergesen v. U.S., Civil No. 2044 D. Wash. Complaint dismissed March 11, 1958; no appeal.

Estate of William Bigheart, Jr., IA-T-21 (August 8, 1969), IA-T-21 (Supp.) (September 4, 1969)

Velma Rose Bigheart, Surviving Spouse of William Bigheart, Jr., Deceased Unallotted Osage Indian v. John Pappan, Supt., Osage Indian Agency, et al., Civil No. 69-C-303, D. Okla. Order to Stay Proceedings issued May 15, 1970; amendment to complaint filed December 17, 1971; judgment for defendant, July 31, 1972; reconsideration denied, August 23, 1972; aff'd., 482 F 2d 1066 (10th Cir. 1973); cert. denied, 416 U.S. 937 (1974); rehearing denied, 417 U.S. 977 (1974).

Bishop Coal Company, 82 I.D. 553 (1975)

William Bennett, Paul F. Goad & United Mine Workers v. Thomas S. Kleppe, Secretary of the Interior, No. 75-2158, United States Ct. of Appeals, D. C. Cir. Suit pending.

Estate of Anthony Bitseedy, 5 IBIA 270 (1976)

Ruby Dawson, Guardian ad litem of Anthony Bitseedy, Jr., & Sara Mingus Bitseedy, Mother of Anthony Bitseedy, Jr. v. Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV-77-0237, D. Okla. Judgment for defendant, October 27, 1977.

BLM-A-045569, 70 I.D. 231 (1963)

New York State Natural Gas Corp. v. Stewart L. Udall, Civil No. 2109-63.

Consolidated Gas Supply Corp. v. Stewart L. Udall, et al., Civil No. 2109-63. Judgment for defendant, September 20, 1965; Per curiam decision, aff'd., April 28, 1966; no petition.

Estate of Harold Russell Bobb, 5 IBIA 92 (1976)

Wilson Bobb, Sr. v. U.S. & Cecil D. Andrus, Secretary of the Interior, Civil No. C-77-314, S.D. Wash. Suit pending.

F. W. C. Boesche, A-27997 (August 5, 1959)

Fenelon Boesche v. Fred A. Seaton, Civil No. 2463-59. Judgment for defendant, November 23, 1960

(opinion); aff'd., 303 F. 2d 204 (1961); cert. granted, 371 U.S. 886 (1962); aff'd., 373 U.S. 472 (1963).

Brookhaven Oil Co., A-27459 (July 29, 1957)

Brookhaven Oil Co. v. Fred A. Seaton, Civil No. 2120-57. Judgment for plaintiff, October 1, 1958; no appeal.

Jessie A. Brown, 23 IBLA 23 (1975), On Reconsideration, 28 IBLA 339 (1977)

Jessie A. Brown & W. L. Tallon, Jr. v. Cecil Andrus, Secretary of the Interior, Curt Berklund, Director, Bureau of Land Management & Ben F. Collins, Civil No. F-77-128-Civ, D. Cal. Suit pending.

Melvin A. Brown, 69 I.D. 131 (1962)

Melvin A. Brown v. Stewart L. Udall, Civil No. 3352-62. Judgment for defendant, September 17, 1963; rev'd., 335 F. 2d 706 (1964); no petition.

R. C. Buch, 75 I.D. 140 (1968)

R. C. Buch v. Stewart L. Udall, Civil No. 68-1358-PH, C. D. Cal. Judgment for plaintiff, 298 F. Supp. 381 (1969); rev'd., 449 F. 2d 600 (9th Cir. 1971); judgment for defendant, March 10, 1972.

Buell Brothers, A-30679 (March 29, 1967)

U.S. v. Carl M. Buell & Lloyd F. Buell, d/b/a Buell Bros., U.S. Atty. No. N-371. Compromised, October 23, 1968.

Evelyn M. Bunch, 25 IBLA 44 (1976)

Evelyn M. Bunch v. Thomas Kleppe, Secretary of the Interior, Civil No. A76-115 CIV, D. Alas. Suit pending.

Bureau of Land Management, Appellant, Diamond Ring Ranch, Appellee & Bureau of Sport Fisheries & Wildlife, Amicus Curiae, 12 IBLA 358 (1973)

Diamond Ring Ranch, Inc. v. Rogers C. B. Morton, Secretary of the Interior, & Daniel P. Baker, State Dir., Bureau of Land Management for the State of Wyoming, Civil No. 5934, D. Wyo. Judgment for plaintiff, December 20, 1974.

C. Burglin et al., 21 IBLA 234 (1975)

C. Burglin, A. E. Greig, Owen Jennings, Wallace F. Burnett, Jr., Alexander Miller, Charles Stack, Dora Alice Carter, Earnest G. Carter, Howard Bowen, and Evelyn Franich v. The Secretary of the Interior, Thomas Kleppe, et al., Civil No. A75-232 CIV, D. Alas. Consolidated with C. Burglin, et al. v. Thomas Kleppe, Civil No. A75-113.

Bushman Construction Co., IBCA-103 (March 29, 1957)

Bushman Construction Co. v. U.S., Ct. Cl. No. 437-57. Petition dismissed, 164 F. Supp. 239 (1958).

Cabax Mills, 32 IBLA 225 (1977)

BPS Associates, a Joint Venture composed of Black Investment Properties, Inc., CPC Plants Corp. & Triple S. Enterprises, Inc. v. U.S. & Cecil Andrus, Secretary of the Interior, et al., Civil No. 77-845, D. Ore. Suit pending.

Zelph S. Calder, A-30039 (September 18, 1963)

Zelph S. Calder v. Stewart L. Udall, Civil No. C-219-63, D. Utah. Judgment for defendant, August 10, 1964; no appeal.

The California Co., 66 I.D. 54 (1959)

The California Co. v. Stewart L. Udall, Civil No. 980-59. Judgment for defendant, 187 F. Supp. 445 (1960); aff'd., 296 F. 2d 384 (1961).

State of California, et al. v. Doria Mining and Engineering Corp., et al., U.S., Intervenor, 17 IBLA 380 (1974)

Doria Mining and Engineering Corp. v. Rogers Morton, Secretary of the Interior, et al., Civil No. CV 75-899-FW, C. D. Cal. Judgment for defendant, 420 F. Supp. 837 (1976); appeal filed November 23, 1976.

In the Matter of Cameron Parish, Louisiana, Cameron Parish Police Jury & Cameron Parish School Board, June 3, 1968 appealed by Secretary July 5, 1968, 75 I.D. 289 (1968).

Cameron Parish Police Jury v. Stewart L. Udall, et al., Civil No. 14,206, W. D. La. Judgment for plaintiff, 302 F. Supp. 689 (1969); order vacating prior order issued November 5, 1969.

Canterbury Coal Co., 83 I.D. 325 (1976)

Canterbury Coal Co. v. Thomas S. Kleppe, No. 76-2323, United States Ct. of Appeals, 3d Cir. Aff'd. per curiam, June 15, 1977.

Carbon Fuel Co., 83 I.D. 39 (1976)

United Mine Workers of America v. Thomas S. Kleppe, No. 76-1208, United States Ct. of Appeals, D. C. Cir. Suit pending.

Jack E. Carl, A-27870, A-27900 (April 23, 1959)

Jack E. Carl v. Fred A. Seaton, Civil No. 3069-59. Judgment for defendant, June 20, 1961; aff'd., 309 F. 2d 653 (1962).

Carson Construction Co., 62 I.D. 422 (1955)

Carson Construction Co. v. U.S., Ct. Cl. No. 487-59. Judgment for plaintiff, December 14, 1961; no appeal.

Earnest G. & Dora A. Carter, C. Burglin, Michael F. Scanlan, C. Burglin, 12 IBLA 181 (1973)
See William D. Sexton, et al.

John Jay Casey, IBLA 74-196, Order decided, January 29, 1975.

John Jay Casey v. U.S., Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. R-74-153-RDF, D. Nev. Dismissed without prejudice, December 23, 1974.

C. F. Lytle Co., IBCA-172 (September 30, 1958)

C. F. Lytle Co. v. U.S., Ct. Cl. No. 174-59. Compromised.

Estate of George Chahesenah, IA-T-4 (June 20, 1967)

Viola Atewooftakewa (Tate), et al., v. Udall, Civil No. 67-323, W. D. Okla. Judgment for plaintiff, 277 F. Supp. 464 (1967); rev'd. & remanded to dismiss for want of jurisdiction, 407 F. 2d 394 (10th Cir. 1969); cert. granted, 396 U.S. 815 (1969); rev'd., 397 U.S. 598 (1970).

Chargeability of Acreage Embraced in Oil and Gas Lease Offers, 71 I.D. 337 (1964)
Shell Oil Co., A-30575 (October 31, 1966)

Shell Oil Co. v. Udall, Civil No. 216-67. Stipulation of dismissal filed August 19, 1968.

Chemi-Cote Perlite Corp. v. Arthur C. W. Bowen, 72 I.D. 403 (1965)

Bowen v. Chemi-Cote Perlite, No. 2 CA-Civ. 248, Ariz. Ct. App. Decision against the Dept. by the lower court aff'd., 423 P. 2d 104 (1967); rev'd., 432 P. 2d 435 (1967).

Christy Corp., IBCA-461 & 569 (June 20, 1966)

Christy Corp. v. U.S., Ct. Cl. No. 291-66. Judgment for defendant, Harbor Boat Building Co., 387 F. 2d 395 (1967); compromised, July 10, 1968.

U.S. v. Harco Engineering, A Division of Harbor Boat Building Co., Civil No. 68-827-S, D. Cal. Dismissed with prejudice, February 24, 1970.

Citizens Committee to Save Our Public Lands, 29 IBLA 48 (1977)

Citizens Committee to Save our Public Lands, Hastings Environmental Law Society v. Thomas Kleppe, Secretary of the Interior, et al., Civil No. C-76-32 SC, D. Cal. Suit pending.

Clark County, Nevada, 28 IBLA 210 (1976)

County of Clark, a political subdivision of the State of Nevada v. Thomas Kleppe, Secretary of the Interior & his successors in office & E. I. Rowland, Director, Bureau of Land Management for the State of Nevada & his successors in office, Civil No. LV-77-13 RDF, D. Nev. Suit pending.

Stephen H. Clarkson, 72 I.D. 138 (1965)

Stephen H. Clarkson v. U.S., Cong. Ref. 5-68. Trial Commr's. report adverse to U.S. issued December 16, 1970; Chief Commr's. report concurring with the Trial Commr's. report issued April 13, 1971. P.L. 92-108 enacted accepting the Chief Commr's. report.

Clear Gravel Enterprises, Inc., A-27967, A-27970 (December 29, 1959)

The Dredge Corp. v. E. J. Palmer, No. 366, D. Nev. Judgment for defendant, September 25, 1962; remanded, 338 F. 2d 456 (9th Cir. 1964); judgment for plaintiff, August 8, 1966; rev'd. and remanded with direction to enter judgments for defendants, 398 F. 2d 791 (9th Cir. 1968); cert. denied, 393 U.S. 1066 (1969).

Appeal of COAC, Inc., 81 I.D. 700 (1974)

COAC, Inc. v. U.S., Ct. Cl. No. 395-75. Suit pending.

P. Cobb, A-29769 (May 27, 1964)

P. and Osro Cobb v. U.S., Civil No. 967, W. D. Ark. Motion to dismiss denied, 240 F. Supp. 574 (1965); dismissed, January 17, 1966.

Mrs. Hannah Cohen, 70 I.D. 188 (1963)

Hannah and Abram Cohen v. U.S., Civil No. 3158, D. R. I. Compromised.

Barney R. Colson, 70 I.D. 409 (1963)

Barney R. Colson, et al. v. Stewart L. Udall, Civil No. 63-26-Civ.-Oc, M. D. Fla. Dismissed with prejudice, 278 F. Supp. 826 (1968); aff'd., 428 F. 2d 1046 (5th Cir. 1970); cert. denied, 401 U.S. 911 (1971).

Barney R. Colson, 7 IBLA 40 (1972)

Barney R. Colson v. Rogers C. B. Morton, Civil No. 1960-72. Dismissed with prejudice, February 7, 1974; Per curiam decision, aff'd., January 24, 1975; no petition.

Columbian Carbon Co., Merwin E. Liss, 63 I.D. 166 (1956)

Merwin E. Liss v. Fred A. Seaton, Civil No. 3233-56. Judgment for defendant, January 9, 1958; appeal dismissed for want of prosecution, September 18, 1958, D. C. Cir. No. 14,647.

Commercial Metals Co., IBCA-99 (August 27, 1959)

Commercial Metals Co. v. U.S., Ct. Cl. No. 458-59. Judgment for plaintiff, June 16, 1966.

Appeal by the Confederated Salish & Kootenai Tribes of the Flathead Reservation, in the Matter of the Enrollment of Mrs. Elverna Y. Clairmont Baciarelli, 77 I.D. 116 (1970)

Elverna Yevonne Clairmont Baciarelli v. Rogers C. B. Morton, Civil No. C-70-2200 SC, D. Cal. Judgment for defendant, August 27, 1971; aff'd., 481 F. 2d 610 (9th Cir. 1973); no petition.

Consolidated Mines & Smelting Co., et al., A-30760 (September 19, 1967)

H. D. Brown v. U.S. & Walter Hickel, Civil No. 69-2332-F, D. Cal. Dismissed with prejudice, March 20, 1970; reconsideration denied, May 20, 1970.

Constitution Petroleum Co., Inc., et al., 25 IBLA 319 (1976)

Constitution Petroleum Co., Arrow Petroleum Co., & East Utah Mining Co. v. Thomas S. Kleppe, et al., Civil No. C-76-257, D. Utah. Suit pending.

Appeal of Continental Oil Co., 68 I.D. 337 (1961)

Continental Oil Co. v. Stewart L. Udall, et al., Civil No. 366-62. Judgment for defendant, April 29, 1966; aff'd., February 10, 1967; cert. denied, 389 U.S. 839 (1967).

Continental Oil Co. v. Aztec Exploration & Development Co., 32 IBLA 1 (1977)

Aztec Exploration & Development Co. v. Dept. of the Interior, Office Hearings & Appeals, Interior Board of Land Appeals & Continental Oil Co., Civil No. CIV 77-827 PHX, D. Ariz. Suit pending.

Estate of Hubert Franklin Cook, 5 IBIA 42; 83 I.D. 75 (1976)

Leroy V. & Roy H. Johnson, Marlene Johnson Exendine & Ruth Johnson Jones v. Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV-76-0362-E, W.D. Okla. Suit pending.

Autrice C. Copeland,
See Leslie N. Baker, et al.

E. L. Cord, Donald E. Wheeler, Edward D. Neuhoff, 80 I.D. 301 (1973)

Edward D. Neuhoff & E. L. Cord v. Rogers C. B. Morton, Secretary of the Interior, Civil No. R-2921, D. Nev. Dismissed, September 12, 1975 (opinion); appeal docketed, November 14, 1975.

Jay Frederick Cornell, 4 IBLA 11 (1971)

Jay F. Cornell v. Rogers C. B. Morton, Civil No. A-5-72, D. Alas. Judgment for defendant, March 23, 1973; aff'd., September 3, 1974; no petition.

William D. Cornia, et al., Wyoming 4-63-1, etc., Utah 1-63-1, etc., (August 25, 1965)

William D. Cornia, et al. v. Stewart L. Udall, Civil No. 4-66, N. D. Utah. Dismissed with prejudice, September 1, 1967.

Cortella Coal Corp., et al., Alaska Mineral Exploration Co., 13 IBLA 158 (1973)

Cortella Coal Corp. & Alaska Mineral Exploration Co. v. Curtis V. McVee, State Dir., Bureau of Land Management, State of Alaska, Burton W. Silcock, Dir., Bureau of Land Management & Rogers C. B. Morton, Secretary of the Interior, Civil No. A-169-73, D. Alas. Dismissed with prejudice, January 13, 1976.

Appeal of Cosmo Construction Co., 73 I.D. 229 (1966)

Cosmo Construction Co., et al. v. U.S., Ct. Cl. No. 119-68. Ct. opinion setting case for trial on the merits issued March 19, 1971.

Cotton Petroleum Corp. v. Samedan Oil Corp., 29 IBLA 13 (1977)

Cotton Petroleum Corp. v. The Honorable Cecil Andrus, Secretary of the Interior, Stanley Speaks, Area Director for the Bureau of Indian Affairs, Anadarko Agency & Samedan Oil Corp., Civil No. CIV 77-0415T, D. Okla. Suit pending.

Cowin & Co., 83 I.D. 409 (1976)

United Mine Workers of America v. Thomas S. Kleppe, No. 76-1980, United States Ct. of Appeals, D. C. Cir. Suit pending.

Estate of Jonah Crosby (Deceased Wisconsin Winnebago Unallotted), 81 I.D. 279 (1974)

Robert Price v. Rogers C. B. Morton, Individually & in his official capacity as Secretary of the Interior & his successors in office, et al., Civil No. 74-0-189, D. Neb. Remanded to the Secretary for further administrative action, December 16, 1975.

Elizabeth Barndt Crouse, et al., A-30542 (March 7, 1968)

Elizabeth Barndt Crouse, et al. v. K. Ranch, Inc., Udall, et al., Civil No. R-2063, D. Nev. Dismissed without prejudice, April 15, 1969; no appeal.

Elsie May Pikok Crow, 3 IBLA 114 (1971)

Elsie May Pikok Crow v. U.S., & Rogers C. B. Morton, Civil No. F-27-71 Civ., D. Alas. Dismissed, July 13, 1972; no appeal.

Estate of George Daniels, IA-1295 (November 2, 1965)

Elizabeth Daniels, et al. v. Johnson, Supt., Osage Indian Agency & Udall, Civil No. 6443, N. D. Okla. Dismissed with prejudice, January 9, 1967.

Oma Belle Day, et al., AA-5702 (December 30, 1969)

Oma Belle Day v. Walter J. Hickel, et al., Civil No. A-9-70, D. Alas. Judgment for defendant, February 19, 1971; aff'd., 481 F. 2d 473 (9th Cir. 1973); no petition.

John C. deArmas, Jr., P. A. McKenna, 63 I.D. 82 (1956)

Patrick A. McKenna v. Clarence A. Davis, Civil No. 2125-56. Judgment for defendant, June 20, 1957; aff'd., 259 F. 2d 780 (1958); cert. denied, 358 U.S. 385 (1958).

The Dredge Corp., 64 I.D. 368 (1957) 65 I.D. 336 (1958)

The Dredge Corp. v. J. Russell Penny, Civil No. 475, D. Nev. Judgment for defendant, September 9, 1964; aff'd., 362 F. 2d 889 (9th Cir. 1966); no petition. See also Dredge Co. v. Husite Co., 369 P. 2d 676 (1962); cert. denied, 371 U.S. 821 (1962).

Eastern Associated Coal Corp., 82 I.D. 22 (1975)

International Union of United Mine Workers of America v. Rogers C. B. Morton, Secretary of the Interior, No. 75-1107, United States Ct. of Appeals, D. C. Cir. Dismissed by stipulation, October 29, 1975.

Eastern Associated Coal Corp., 82 I.D. 311 (1975)

United Mine Workers of America v. Interior Board of Mine Operations Appeals, No. 75-1727, United States Ct. of Appeals, D. C. Cir. Petition for Review withdrawn, July 28, 1975.

Eastern Associated Coal Corp., 82 I.D. 506 (1975), Reconsideration, 83 I.D. 425 (1976), Aff'd. en banc, 83 I.D. 695 (1976), 7 IBMA 152 (1976)

United Mine Workers of America v. Cecil D. Andrus, No. 77-1090, United States Ct. of Appeals, D. C. Cir. Voluntary dismissal, April 4, 1977.

Lawrence Edwards, A-30696, A-30705 (April 21, 1967)

Lawrence Edwards v. Stewart Udall, Civil No. 2714, D. Mont. Rev'd. & remanded, November 18, 1968; stipulation for dismissal & order filed August 4, 1970.

Wesley Laverne Edwards v. Paul Unruh, 33 IBLA 277 (1978)

Wesley Laverne Edwards v. U.S., Cecil Andrus, Secretary of the Interior, E. I. Rowland, Nevada State Director, Bureau of Land Management & Paul Unruh, Civil No. 77-0050 BRI, D. Nev. Suit pending.

Appeal of Eklutna, Inc., 1 ANCAB 165; 83 I.D. 500 (1976)

State of Alaska v. Alaska Native Claims Appeal Board, et al., Civil No. A76-236, D. Alas. Suit pending.

Heldina Eluska, 21 IBLA 292 (1975)

Heldina Eluska, Individually & on behalf of all others similarly situated v. Thomas Kleppe, individ. & in his official capacity as Secretary of the Interior, Civil No. A-76-26 CIV, D. Alas. Remanded for exhaustion of administrative remedies; reconsideration denied, December 10, 1976; appeal dismissed; judgment denying plaintiffs motion for summary judgment & remanding case to Agency, April 20, 1977; appeal filed April 25, 1977.

Henry J. Ernst, A-27196 (November 7, 1955)

Henry J. Ernst v. Secretary of the Interior, Civil No. 9303, D. Alas. Return of service quashed & complaint dismissed, December 28, 1956 (opinion); aff'd., 244 F. 2d 344 (9th Cir. 1957).

David H. Evans v. Ralph C. Little, A-31044 (April 10, 1970), 1 IBLA 269; 78 I.D. 47 (1971)

David H. Evans v. Rogers C. B. Morton, Civil No. 1-71-41, D. Idaho. Order granting motion of Ralph C. Little for leave to intervene as a party defendant issued June 5, 1972. Judgment for

defendants, July 27, 1973; aff'd., March 12, 1975; no petition.

Elsie V. Farington, 9 IBLA 191 (1973)

Elsie V. Farington v. Rogers C. B. Morton, Secretary of the Interior, Civil No. S2768, E. D. Cal. Dismissed with prejudice, December 5, 1973 (opinion); no appeal.

John J. Farrelly, et al., 62 I.D. 1 (1955)

John J. Farrelly & The Fifty-One Oil Co. v. Douglas McKay, Civil No. 3037-55. Judgment for plaintiff, October 11, 1955; no appeal.

Ralph G. Faulkner, et al., 26 IBLA 110 (1976)

Ralph G., John L., Laura Jo, R. Fred & Susan L. Faulkner v. Thomas S. Kleppe, Secretary of the Interior, Curt Berklund, Director, Bureau of Land Management, et al., Civil No. 1-77-99, D. Idaho. Suit pending.

Chester H. Ferguson et al., 20 IBLA 224 (1975)

Chester H. Ferguson, Stella Ferguson Thayer & Howell L. Ferguson v. Rogers C. B. Morton, Secretary of the Interior et al., Civil No. 75-404-Civ-T-K, M. D. Fla. Dismissed without prejudice, July 16, 1975.

Administrative Appeal of Hannah Finnesand, A Native Alaska Indian v. Commissioner of Indian Affairs, 3 IBIA 263 (1975)

Hannah Finnesand and Flora Rondeau for themselves and all others similarly situated, and Flora Rondeau as next friend for Deborah Rondeau, Mitchell Rondeau & David Rondeau for themselves and all others similarly situated v. Rogers C. B. Morton, et al., Civil No. A75-42, D. Alas. Consent decree approved by the Judge.

Carl E. Forsberg, et al., A-29158 et al., (August 19, 1963)

Carl E. Forsberg v. Stewart L. Udall, Civil No. 63-472, D. Ore. Judgment for defendant, 255 F. Supp. 382 (1966); appeal dismissed, October 13, 1966. See Linn Land Co. v. Stewart L. Udall.

Robert K. Foster, et al., A-29857 (June 15, 1964)

Robert K. Foster, et al. v. Manager, Riverside Land Office, et al., Civil No. 64-1110-WM, S. D. Cal. Judgment for defendant, 296 F. Supp. 1348 (1966); no appeal.

T. Jack Foster, 75 I.D. 81 (1968)

Gladys H. Foster, Executrix of the estate of T. Jack Foster v. Stewart L. Udall, Boyd L. Rasmussen, Civil No. 7611, D. N. M. Judgment for plaintiff, June 2, 1969; no appeal.

Franco Western Oil Co., et al., 65 I.D. 316, 427 (1958)

Raymond J. Hansen v. Fred A. Seaton, Civil No. 2810-59. Judgment for plaintiff, August 2, 1960 (opinion); no appeal.

See Safarik v. Udall, 304 F. 2d 944 (1962); cert. denied, 371 U.S. 901 (1962).

Myrtle A. Freer, et al., A-29221 (April 2, 1963)

Willis W. Ritter v. Rogers C. B. Morton, et al., Civil No. 1-70-74, D. Idaho. Judgment for plaintiff, November 14, 1972.

Coral V. Funderburg, A-30514 (June 14, 1966)

Coral V. Funderburg v. Stewart L. Udall, et al., Civil No. 2818 ND, S. D. Cal. Dismissed with prejudice, February 15, 1967; aff'd., 396 F. 2d 638 (9th Cir. 1968); no petition.

Gabbs Exploration Co., 67 I.D. 160 (1960)

Gabbs Exploration Co. v. Stewart L. Udall, Civil No. 219-61. Judgment for defendant, December 1, 1961; aff'd., 315 F. 2d 37 (1963); cert. denied, 375 U.S. 822 (1963).

Bernard J. & Myrle A. Gaffney, A-30327 (October 28, 1965)

Bernard J. & Myrle A. Gaffney v. Stewart L. Udall, Civil No. 3-66-22, D. Minn. Stipulated dismissal without prejudice, January 17, 1969; no appeal.

Estate of Temens (Timens) Vivian Gardafee, 5 IBIA 113; 83 I.D. 216 (1976)

Confederated Tribes & Bands of the Yakima Indian Nation v. Thomas Kleppe, Secretary of the Interior, & Erwin Ray, Civil No. C-76-200, E.D. Wash. Suit pending.

Stanley Garthofner, Duvall Bros., 67 I.D. 4 (1960)

Stanley Garthofner v. Stewart L. Udall, Civil No. 4194-60. Judgment for plaintiff, November 27, 1961; no appeal.

Estate of Gei-kaun-mah (Bert), 82 I.D. 408 (1975)

Juanita Geikaunmah Mammedaty & Imogene Geikaunmah Carter v. Rogers C. B. Morton, Secretary of the Interior, Civil No. CIV 75-1010-E, W. D. Okla. Judgment for defendant, 412 F. Supp. 283 (1976); no appeal.

General Excavating Co., 67 I.D. 344 (1960)

General Excavating Co. v. U.S., Ct. Cl. No. 170-62. Dismissed with prejudice, December 16, 1963.

Nelson A. Gerttula, 64 I.D. 225 (1957)

Nelson A. Gerttula v. Stewart L. Udall, Civil No. 685-60. Judgment for defendant, June 20, 1961; motion for rehearing denied, August 3, 1961; aff'd., 309 F. 2d 653 (1962); no petition.

Charles B. Gonsales, A-27944 (April 22, 1959)

Charles B. Gonsales v. Frederick A. Seaton, Civil No. 2497-59. Plaintiff's amended complaint dismissed with prejudice, January 12, 1962; no appeal.

Charles B. Gonsales et al., Western Oil Fields, Inc., et al., 69 I.D. 236 (1962)

Pan American Petroleum Corp. & Charles B. Gonsales v. Stewart L. Udall, Civil No. 5246, D. N. M. Judgment for defendant, June 4, 1964; aff'd., 352 F. 2d 32 (10th Cir. 1965); no petition.

Charles B. Gonsales, A-29010 (March 27, 1963)

Charles B. Gonsales v. Stewart L. Udall, Civil No. 5378 D. N. M. Dismissed with prejudice, November 12, 1963.

John Gonzales, A-30604 (September 26, 1968)

John Gonzales v. Stewart Udall, Civil No. A-128-68, D. Alas. Order to Stay Proceedings for 6 months filed June 3, 1970; judgment for plaintiff, June 30, 1972; upon stipulation of the parties, appeal dismissed, November 30, 1972.

James C. Goodwin, 80 I.D. 7 (1973)

James C. Goodwin v. Dale R. Andrus, State Dir., Bureau of Land Management, Burton W. Silcock, Dir., Bureau of Land Management, & Rogers C. B. Morton, Secretary of the Interior, Civil No. C-5105, D. Colo. Dismissed, November 29, 1975 (opinion); appeal dismissed, March 9, 1976.

Ray Granat, et al., 25 IBLA 115 (1976)

Ray Granat v. Thomas S. Kleppe & the Department of the Interior, Civil No. C 76-274, D. Utah. Suit pending.

Estate of George Green, IA-T-11 (June 7, 1968)

Lillian Crenshaw, et al. v. Secretary, Civil No. 68-317, W. D. Okla. Dismissed, February 4, 1969; no appeal.

LaVonne E. Grewell, 23 IBLA 190 (1976)

LaVonne V. Grewell v. Thomas S. Kleppe, Secretary of the Interior, Civil No. C76-602V, W.D. Wash. Suit pending.

Grindstone Butte Project, 18 IBLA 16 (1974), 24 IBLA 49 (1976)

Grindstone Butte Project, et al. v. Thomas S. Kleppe, Secretary of the Interior, Curt Berklund, Director of the Bureau of Land Management, et al., Civil No. 1-76-173, D. Idaho. Judgment for Plaintiff, September 8, 1977; appeal filed November 7, 1977.

Estate of James Growing Thunder, Fort Peck Allottee No. 2210, deceased, 3 IBIA 18 (1974)

Nancy Growing Thunder & Vernon Growing Thunder, Minors, by and through their next friend and Guardian Ad Litem, Dale Running.Bear v. Rogers Morton, individually and as Secretary of the Interior, et al., Civil No. 74-73 BLG, D. Mont. Dismissed, March 15, 1976.

Gulf Oil Corp., 69 I.D. 30 (1962)

Southwestern Petroleum Corp. v. Stewart L. Udall, Civil No. 2209-62. Judgment for defendant, October 19, 1962; aff'd., 325 F. 2d 633 (1963); no petition.

Gulf Oil Corp. et al., 21 IBLA 1 (1975)

Gulf Oil Corp. & Mobil Oil Corp. v. Stanley K. Hathaway, Secretary of the Interior, et al., Civil No. 75-2396, Section F, E. D. La. Remanded to the Secretary of the Interior for a hearing, April 13, 1977.

Thomas V. Gullo & Joseph L. Randazzo, 29 IBLA 126 (1977)

Thomas V. Gullo & Joseph L. Randazzo v. Department of the Interior, Civil No. 77-0869. Suit pending.

Gustav Hirsch Organization, Inc., IBCA-175 (October 30, 1958)

Gustav Hirsch Organization, Inc. v. U.S., Ct. Cl. No. 416-59. Compromised.

Guthrie Electrical Construction, 62 I.D. 280 (1955), IBCA-22 (Supp.) (March 30, 1956)

Guthrie Electrical Construction Co. v. U.S., Ct. Cl. No. 129-58. Stipulation of settlement filed September 11, 1958. Compromise offer accepted and case closed October 10, 1958.

L. H. Hagood, et al., 65 I.D. 405 (1958)

Edwin Still, et al. v. U.S., Civil No. 7897, D. Colo. Compromise accepted.

William Hall, et al., A-30849, A-30852, A-30857 (September 16, 1968)

William Hall & Diane Hall v. Secretary of the Interior, Civil No. A-169-68, D. Alas. Dismissed, July 25, 1969; no appeal.

Lester J. Hamel, A-28830 (September 17, 1962)

Lester J. Hamel v. Neal D. Nelson et al., Civil No. 8565, N. D. Cal. Judgment for defendant, December 13, 1963 (opinion); judgment entered February 11, 1964; appeal docketed February 14, 1964; dismissed by plaintiff, March 20, 1964.

Raymond J. Hansen, et al., 67 I.D. 362 (1960)

Raymond J. Hansen, et al. v. Stewart L. Udall, Civil No. 3902-60. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); cert. denied, 371 U.S. 901 (1962).

Robert Schulein v. Stewart L. Udall, Civil No. 4131-60. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); no petition.

Raymond J. Hansen, A-30179 (March 5, 1965)

Mary L. Brandt and Natalie Z. Shell v. Stewart L. Udall, Civil No. 2659-ND, S. D. Cal. Dismissed, September 30, 1965; amended complaint filed November 15, 1965; judgment for defendant, June 7, 1966; dismissed for lack of jurisdiction, November 15, 1967; judgment for defendants, March 26, 1968; rev'd., 427 F. 2d 53 (9th Cir. 1970); no petition.

Mary L. Brandt & Natalie Z. Shell v. Stewart L. Udall, Civil No. 2715-ND, S. D. Cal. Dismissed, December 3, 1965.

Beverly Harrell, 12 IBLA 276 (1973)

Beverly Harrell v. A. John Hillsamer, Chief of Land & Minerals Operations, Bureau of Land Management for Nevada, & E. I. Rowland, State Dir., Bureau of Land Management, Nevada, Civil No. CIV-LV-2137, RDF, D. Nev. Dismissed, December 7, 1973; motion for new trial denied, February 6, 1974; no appeal.

Paul Harvey, et al. A-30552 (June 24, 1966)

Paul Harvey, Grace Ernest and Lalo Enriquez v. Stewart L. Udall, Civil No. 6753, D. N. M. Judgment for defendant, January 25, 1967 aff'd., 384 F. 2d 883 (10th Cir. 1967); no petition.

Billy K. Hatfield, et al. v. Southern Ohio Coal Co., 82 I.D. 289 (1975)

District 6 United Mine Workers of America, et al. v. U.S. Dept. of Interior Board of Mine Operations Appeals, No. 75-1704, U.S. Court of Appeals, D. C. Cir. Board's decision aff'd., 562 F. 2d 1260 (1977).

Headwaters Association, Protestant-Appellant Cabax Mills, et al., Intervenors, IBLA 76-68, remanded to Bureau of Land Management by Order, October 21, 1975; Appeal of Harold P. Canady, et al., IBLA 73-357, pending; Appeal of Elizabeth Freeman, IBLA 76-51, pending; Appeal of Alan Troxler, IBLA 74-215, pending; Appeal of Alan Winter, et al., IBLA 75-653, pending; Appeal of Carl Wittman, IBLA 76-14, pending.

Arthur Downing, Alan Winter, Alan Troxler and Headwaters v. Kent Frizzell, Acting Secretary of the Interior, et al., Civil No. 75-1128, D. Ore. Stipulated dismissal, December 30, 1976.

Jesse Higgins, Paul Gower & William Gipson v. Old Ben Coal Corp., 81 I.D. 237 (1974)

Jesse Higgins, et al. v. Cecil D. Andrus, No. 77-1363, United States Ct. of Appeals, D. C. Cir. Dismissed for lack of jurisdiction, June 20, 1977.

Hiko Bell Mining & Oil Co., 24 IBLA 255 (1976)

Hiko Bell Mining & Oil Co., a Utah Corp. v. Thomas S. Kleppe, Secretary of the Interior, Civil No. C 76-138, D. Utah. Suit pending.

Kenneth Holt, an Individual, etc., 68 I.D. 148 (1961)

Kenneth Holt, etc. v. U.S., Ct. Cl. No. 162-62. Stipulated judgment, July 2, 1965.

Hope Natural Gas Co., 70 I.D. 228 (1963)

Hope Natural Gas Co. v. Stewart L. Udall, Civil No. 2132-63.

Consolidated Gas Supply Corp. v. Stewart L. Udall, et al., Civil No. 2109-63. Judgment for defendant, September 20, 1965; Per curiam decision, aff'd., April 28, 1966; no petition.

Elbert F. Howey, 15 IBLA 208 (1974)

Elbert F. Howey v. Rogers Morton, Secretary of the Interior, Civil No. A74-56, D. Alas. Dismissed with prejudice, October 16, 1975 (opinion); no appeal.

Estate of Alvin Hudson, 5 IBIA 174 (1976)

David Russell Hudson v. U.S., Thomas S. Kleppe, Secretary of the Interior, Veradine Reed Stearns, Lois Jean Reed Saxton, Mildred Reed Anderson, Ivan Stacy Reed Cleveland, Civil No. C76-227T, W.D. Wash. Suit pending.

Boyd L. Hulse v. William H. Griggs, 67 I.D. 212 (1960)

William H. Griggs v. Michael T. Solan, Civil No. 3741, D. Idaho. Stipulation for dismissal filed May 15, 1962.

Dan H. Hunter, Ray H. Albrechtsen, IBLA 70-79, 565, (Order of dismissal dated February 22, 1973), reconsideration denied by Order, June 1, 1973.

Dan H. Hunter & Mountain States Resources Corp. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. C-393-73, D. Utah. Judgment for Defendant, December 17, 1974; aff'd., 529 F. 2d 645 (10th Cir. 1976); no petition.

Ray H. Albrechtsen & Mountain States Corp. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. C-392-73, D. Utah. Judgment for plaintiff, March 31, 1976; rev'd. & remanded to the Dist. Court with directions that the trial Court dismiss the action and enter judgment for the Secretary, February 15, 1978.

Stanley W. Hutchinson v. Clyde W. Bishop, A-29693 (May 4, 1964)

Clyde W. Bishop v. Stewart L. Udall, Civil No. 1-65-54, D. Idaho. Judgment for plaintiff, July 7, 1966; no appeal.

H & W Oil Co., 22 IBLA 313 (1975)

H & W Oil Co. v. Thomas S. Kleppe, Secretary of the Interior, Civil No. 763016, E.D. Ill. Judgment for defendant, November 29, 1976.

John V. Hyrup, 15 IBLA 412 (1974)

John V. Hyrup v. Rogers C. B. Morton, Civil No. 74-689, D. Colo. Rev'd. & remanded for further administrative proceedings, 406 F. Supp. 214 (1976); appeal filed January 14, 1976; final judgment entered May 12, 1976; appeal filed July 7, 1976; Aff'd., November 7, 1977; no petition.

Idaho Desert Land Entries - Indian Hill Group, 72 I.D. 156 (1965), U.S. v. Ollie Mae Shearman, et al. - Idaho Desert Land Entries - Indian Hill Group, 73 I.D. 386 (1966)

Wallace Reed, et al. v. Dept. of the Interior, et al., Civil No. 1-65-86, D. Idaho. Order denying preliminary injunction, September 3, 1965; dismissed, November 10, 1965; amended complaint filed, September 11, 1967.

U.S. v. Raymond T. Michener, et al. Civil No. 1-65-93, D. Idaho. Dismissed without prejudice, June 6, 1966.

U.S. v. Hood Corp., et al., Civil No. 1-67-97, S. D. Idaho.

Civil Nos. 1-65-86 & 1-67-97 consolidated. Judgment adverse to U.S., July 10, 1970; rev'd., 480 F. 2d 634 (9th Cir. 1973); cert. denied, 414 U.S. 1064 (1973); dismissed with prejudice subject to the terms of the stipulation, August 30, 1976.

Appeal of Inter Helo, Inc., IBCA-713-5-68 (December 30, 1969), 82 I.D. 591 (1975)

John Billmeyer, etc. v. U.S., Ct. Cl. No. 54-74. Remanded with instructions to admit evidence, May 30, 1975.

Interpretation of the Submerged Lands Act, 71 I.D. 20 (1964)

Floyd A. Wallis v. Stewart L. Udall, Civil No. 3089-63. Dismissed with prejudice, March 27, 1968.

C. J. Iverson, 82 I.D. 386 (1975)

C. J. Iverson v. Kent Frizzell, Acting Secretary of the Interior & Dorothy D. Rupe, Civil No. 75-106-Blg, D. Mont. Stipulation for dismissal with prejudice, September 10, 1976.

J. A. Jones Construction Co., et al., IBCA-233 (June 17, 1960)

Palisades Contractors, et al. v. U.S., Civil No. 2247, D. Idaho. Settled.

J. A. Terteling & Sons, 64 I.D. 466 (1957)

J. A. Terteling & Sons v. U.S., Ct. Cl. No. 114-59. Judgment for defendant, 390 F. 2d 926 (1968); remaining aspects compromised.

J. D. Armstrong Co., 63 I.D. 289 (1956)

J. D. Armstrong, Inc. v. U.S., Ct. Cl. No. 490-56. Plaintiff's motion to dismiss petition allowed, June 26, 1959.

Jensen-Rasmussen, et al., IBCA-363 (March 14, 1963)

Jensen-Rasmussen & Co. v. U.S., Civil No. 5963, W. D. Wash. Judgment for defendant, February 24, 1964; no appeal.

Dale Johnson, A-30806 (September 17, 1968)

Dale Johnson v. Stewart L. Udall, Secretary of the Interior, Civil No. A-135-68, D. Alas. Stipulated Dismissal, April 10, 1969; no appeal.

M. G. Johnson, 78 I.D. 107 (1971), U.S. v. Menzel G. Johnson, 16 IBLA 234 (1974)

Menzel G. Johnson v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CN-LV-74-158, RDF, D. Nev. Judgment for defendant, October 18, 1977; appeal filed December 5, 1977.

Estate of Edward Alpheus Jones, 5 IBIA 138 (1976)

Robert Sam v. U.S., et al., Civil No. 76-0552. Dismissed as to defendants U.S., Department of the Interior & the Bureau of Indian Affairs, July 30, 1976; judgment for defendant Robert C. Snashall, July 30, 1976.

Kenneth J. Kadow, et al., A-30053 (October 5, 1964)

Kenneth J. Kadow, et al. v. Stewart L. Udall, Secretary of the Interior, Civil No. A-1-65, D. Alas. Judgment for defendant, September 7, 1967; dismissed for lack of prosecution, February 2, 1968; no petition.

Kanawah Coal Co., 7 IBMA 234 (1977)

Kanawha Coal Co. v. Cecil D. Andrus, No. 77-1089, United States Ct. of Appeals, 4th Cir. Petition for review denied, 553 F. 2d 361 (4th Cir. 1977).

R. A. Keans, A-30183 (February 16, 1965)

R. A. Keans v. Stewart L. Udall, et al., Civil No. 2648-ND, S. D. Cal. Defendant's motion to dismiss granted, November 22, 1965; no appeal.

Estate of Kee-ah-tha-com-oke-quah, IA-974, 975 (September 16, 1965)

D. Q. (Bill) Couch v. Stewart L. Udall, Civil No. 66-282, W. D. Okla. Aff'd., 265 F. Supp. 848 (1967); aff'd., 404 F. 2d 97 (10th Cir. 1968); no petition.

Kerr McGee Corp., Cabot Corp., Felmont Oil Corp., and Case-Pomeroy Corp., 6 IBLA 108 (1972), Petition for Reconsideration denied, May 14, 1974.

Kerr-McGee Corp., Cabot Corp., Felmont Oil Corp., & Case-Pomeroy Oil Corp. v. Rogers C. B. Morton, et al., Civil No. 616-72. Dismissed with prejudice, October 22, 1974; aff'd., 527 F. 2d 838 (1975); no petition.

Estate of San Pierre Kilkakhan (Sam Hill), 1 IBIA 299; 79 I.D. 583 (1972), 4 IBIA 242 (1975), 5 IBIA 12 (1976)

Christine Sam & Nancy Judge v. Thomas Kleppe, Secretary of the Interior, Civil No. C-76-14, E.D. Wash. Dismissed with Prejudice.

John J. King, A-28543 (October 13, 1960)

John J. King v. Stewart L. Udall, Civil No. 68-61. Judgment for plaintiff, November 8, 1961; rev'd., 308 F. 2d 650 (1962); no petition.

John J. King, et al., Fairbanks 033268, 033279 (September 25, 1964)

John J. King, et al. v. Stewart L. Udall, Civil No. 2750-64. Judgment for plaintiffs, 266 F. Supp. 747 (1967); on May 4, 1967, a stipulation of voluntary dismissal with prejudice sgd. by the plaintiffs and all other parties.

John J. King, Dorothy W. King, Fairbanks 034577 (October 26, 1965)

John J. and Dorothy W. King v. Stewart L. Udall, Civil No. A-6-66, D. Alas. Dismissed with prejudice, April 24, 1968.

Barbara G. Kirk and Marjorie G. Wright
See Dean Kirk

Dean Kirk, A-29018a (April 26, 1963), Barbara G. Kirk and Marjorie G. Wright, A-30022 (August 20, 1963)

George M. Larsen, et al. v. Stewart L. Udall, Civil No. 1651, D. Nev. Stipulation covering seven land entries; four are dismissed as moot, three are dismissed with prejudice.

Kirkpatrick Oil Co., 32 IBLA 329 (1977)

Kirkpatrick Oil & Gas Co. v. U.S. & Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV-77-1247E, D. Okla. Suit pending.

Margaret L. & Allan D. Klatt, 23 IBLA 59 (1975)

Margaret L. Klatt v. Thomas S. Kleppe, Individually & in his official capacity as Secretary of the Interior, et al., Civil No. A76-44 CIV, D. Alas. Suit pending.

Anquita L. Kluenter, et al., A-30483, November 18, 1965
See Bobby Lee Moore, et al.

Leo J. Kottas, Earl Lutzenhiser, 73 I.D. 123 (1966)

Earl M. Lutzenhiser and Leo J. Kottas v. Stewart L. Udall, et al., Civil No. 1371, D. Mont. Judgment for defendant, June 7, 1968; aff'd., 432 F. 2d 328 (9th Cir. 1970); no petition.

Max L. Krueger, Vaughan B. Connelly, 65 I.D. 185 (1958)

Max Krueger v. Fred A. Seaton, Civil No. 3106-58. Complaint dismissed by plaintiff, June 22, 1959.

James M. Krumtum and Cale M. Shearer, A-30838 (December 21, 1967)

James M. Krumtum & Cale M. Shearer v. Udall, et al., Civil No. 6567, D. Ariz. Judgment for defendant, January 6, 1970; no appeal.

Joseph T. Kurkowski, 15 IBLA 13 (1974)

John & Ruth E. Melcher v. Edwin Zaidlicz, Montana Dir. of the Bureau of Land Management, et al., Civil No. 74-34-BLG, D. Mont. Dismissed for want of jurisdiction, September 4, 1974; dismissed, September 11, 1975.

Richard M. Lade, As Attorney in Fact for Santa Fe Pacific R. R., A-29121 (January 10, 1963)

Richard M. Lade, Attorney in Fact for Santa Fe Pacific R. R. v. Udall, et al., Civil No. 67-14, D. Ore. Judgment for defendant, 295 F. Supp. 265 (1968); aff'd., 432 F. 2d 254 (9th Cir. 1970); no petition.

Bureau of Land Management, Appellant, Diamond Ring Ranch, Appellee & Bureau of Sport Fisheries & Wildlife, Amicus Curiae, 12 IBLA 358 (1973)

Diamond Ring Ranch, Inc. v. Rogers C. B. Morton, Secretary of the Interior, & Daniel P. Baker, State Dir., Bureau of Land Management for the State of Wyoming, Civil No. 5934, D. Wyo. Judgment for plaintiff, December 20, 1974.

W. Dalton La Rue, Sr., 69 I.D. 120 (1962)

W. Dalton La Rue, Sr. v. Stewart L. Udall, Civil No. 2784-62. Judgment for defendant, March 6, 1963; aff'd., 324 F. 2d 428 (1963); cert. denied, 376 U.S. 907 (1964).

W. Dalton La Rue, Sr. & Juanita S. La Rue, d/b/a Winnemucca Ranch, Appellants, M. S. Land & Livestock Co., Intervenor, 9 IBLA 208 (1973)

W. Dalton La Rue, Sr. & Juanita S. La Rue v. U.S. & Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. R-2827, D. Nev. Judgment for defendant, March 12, 1974; aff'd., March 2, 1976; rehearing denied, April 21, 1976; cert. denied, November 1, 1976.

Langdon H. Larwill, et al., A-28697 (May 16, 1963)

Pacific Oil Co., a Corp. v. Stewart L. Udall, Civil No. 9406, D. Colo. Judgment for defendant, 273 F. Supp. 203 (1967); aff'd., 406 F. 2d 452 (10th Cir. 1969); cert. denied, 395 U.S. 978 (1969).

Donald J. Laughlin, d/b/a Riverside Resort & Casino, 25 IBLA 41 (1976) On Reconsideration, 26 IBLA 154 (1976)

Donald J. Laughlin v. Thomas S. Kleppe, Individually & as Secretary of the Interior, Curt Berklund, individually & as Director, Bureau of Land Management, & E. M. Bruce, individually & as Yuma District Manager of the BLM, Civil No. 76-237 RDF, D. Nev. Order granting motion to transfer case to Ariz. granted, May 4, 1977 (Civil No. 77-380-PHX-WPC, D. Ariz. Suit pending.

River Queen Corp., an Arizona Corp., d/b/a River Queen Resort v. Thomas S. Kleppe, Individually & as Secretary of Interior, et al., Civil No. CIV 76-873 PCT-WPC, D. Ariz. Suit pending.

L. B. Samford, Inc., 74 I.D. 86 (1967)

L. B. Samford, Inc. v. U.S., Ct. Cl. No. 393-67. Dismissed, 410 F. 2d 782 (1969); no petition.

Charles Lewellen, 70 I.D. 475 (1963)

Bernard E. Darling v. Stewart L. Udall, Civil No. 474-64. Judgment for defendant, October 5, 1964; appeal voluntarily dismissed, March 26, 1965.

Perley M. Lewis, A-29572 (June 27, 1963)

Perley M. Lewis & Mildred C. Lewis v. Stewart L. Udall, Secretary of the Interior, Civil No. 5003 Phx., D. Ariz. Judgment for defendant, July 31, 1967; amended judgment for defendant, May 28, 1968; aff'd., 427 F. 2d 673 (9th Cir. 1970); cert. denied, 400 U.S. 992 (1970).

Perley M. Lewis and Mildred C. Lewis, A-28707 (December 30, 1963)

Perley M. Lewis, et ux. v. Stewart L. Udall., et al., Civil No. 5451 Phx., D. Ariz. Judgment for defendant, March 22, 1966; aff'd., 374 F. 2d 180 (9th Cir. 1967); no petition.

Administrative Appeal of Ruth Pinto Lewis v. Superintendent of the Eastern Navajo Agency, 4 IBIA 147; 82 I.D. 521 (1975)

Ruth Pinto Lewis, Individually & as the Administratrix of the Estate of Ignacio Pinto v. Thomas S. Kleppe, Secretary of the Interior, & U.S., Civil No. CIV-76-223 M, D. N.M. Judgment for Plaintiff, July 21, 1977; no appeal.

Milton H. Lichtenwalner, A-28909 et al. (June 15, 1962)

Duncan Miller v. Stewart L. Udall, Civil No. 2932-62. Judgment for defendant, July 15, 1963; no appeal.

Milton H. Lichtenwalner, et al., 69 I.D. 71 (1962)

Kenneth McGahan v. Stewart L. Udall, Civil No. A-21-63, D. Alas. Dismissed on merits, April 24, 1964; stipulated dismissal of appeal with prejudice, October 5, 1964.

Linn Land Co., A-28765 (July 12, 1962)

Linn Land Co., et al. v. Stewart L. Udall, Civil No. 63-264, D. Ore. Consolidated with Forsberg v. Udall, Schmand v. Udall & Property Management Co. v. Udall, Battle Mt. Co. v. Udall. Judgment for defendant, 255 F. Supp. 382 (1966), except per curiam dec. as to Battle Mountain which see. Stipulated dismissal on appeal, October 13, 1966.

Merwin E. Liss, et al., 70 I.D. 228 (1963)

Hope Natural Gas Co. v. Stewart L. Udall, Civil No. 2132-63.

Consolidated Gas Supply Corp. v. Stewart L. Udall, et al., Civil No. 2109-63. Judgment for defendant, September 20, 1965; per curiam dec., aff'd., April 28, 1966; no petition.

Leland M. Lucas, A-29228 (December 10, 1962)

Leland Murray Lucas v. Stewart L. Udall, et al., Civil No. 5007 Phx., D. Ariz. Stipulated dismissal, October 10, 1967.

Estate of Richard Lucero, IA-1435 (June 13, 1966)

Eunice Lucero Vaile v. Stewart L. Udall, Civil No. 6808, W. D. Wash. Judgment for defendant, May 12, 1967; summary judgment entered May 25, 1967; no appeal.

Estate of Richard Lucero, I IBIA 46 (1970)

Eunice Lucero Vaile v. Rogers C. B. Morton, et al., Civil No. 9585, D. Wash. Judgment for defendant, January 14, 1972; aff'd., February 26, 1974; no petition.

Bess May Lutey, 76 I.D. 37 (1969)

Bess May Lutey, et al. v. Dept. of Agriculture, BLM, et al., Civil No. 1817, D. Mont. Judgment for defendant, December 10, 1970; no appeal.

James W. McDade, 3 IBLA 226 (1971)

James W. McDade v. Rogers C. B. Morton, Civil No. 2437-71. Judgment for defendant, 353 F. Supp. 1006 (1973); Per curiam decision, aff'd., 494 F. 2d 1156 (D.C. Cir. 1974); no petition.

Sheridan L. McGarry, A-28759 (January 26, 1962)

Sheridan L. McGarry v. Stewart L. Udall, Civil No. 1262-62. Judgment for defendant, 216 F. Supp. 314 (1962); no petition.

Joseph MacIsaac, et al., 8 IBLA 51 (1972)

Joseph F. MacIsaac, Stanley P. Cornelius, Hillen L. Arnold, Henry E. Reeves, Starling P. Cornelius, Richard Ransom v. Rogers C. B. Morton, Civil No. A-6-73, D. Alas. Dismissed with prejudice for want of prosecution by plaintiff, December 19, 1974.

Elgin A. McKenna Executrix, Estate of Patrick A. McKenna, 74 I.D. 133 (1967)

Mrs. Elgin A. McKenna as Executrix of the Estate of Patrick A. McKenna, Deceased v. Udall, Civil No. 2001-67. Judgment for defendant, February 14, 1968; aff'd., 418 F. 2d 1171 (1969); no petition.

Mrs. Elgin A. McKenna, Widow and Successor in Interest of Patrick A. McKenna, Deceased v. Walter J. Hickel, Secretary of the Interior, et al., Civil No. 2401, D. Ky. Dismissed with prejudice, May 11, 1970.

A. G. McKinnon, 62 I.D. 164 (1955)

A. G. McKinnon v. U.S., Civil No. 9433, D. Ore. Judgment for plaintiff, 178 F. Supp. 913 (1959); rev'd., 289 F. 2d 908 (9th Cir. 1961).

Estate of Alvina Beauvois McLean, IA-D-27 (February 14, 1969), IA-D-30 (July 24, 1969)

Kenneth Samuel McLean v. Walter J. Hickel, Secretary of the Interior, Civil No. 2721-69, D. C. Judgment for defendant, March 13, 1970; dismissed for lack of prosecution, April 9, 1971.

Estate of Elizabeth C. Jensen McMaster, 5 IBIA 61; 83 I.D. 145 (1976)

Raymond C. McMaster v. U.S., Dept. of the Interior, Secretary of the Interior & Bureau of Indian Affairs, Civil No. C76-129T, W.D. Wash. Suit pending.

Wade McNeil, et al., 64 I.D. 423 (1957)

Wade McNeil v. Fred A. Seaton, Civil No. 648-58. Judgment for defendant, June 5, 1959 (opinion); rev'd., 281 F. 2d 931 (1960); no petition.

Wade McNeil v. Albert K. Leonard, et al., Civil No. 2226, D. Mont. Dismissed, 199 F. Supp. 671 (1961); order, April 16, 1962.

Wade McNeil v. Stewart L. Udall, Civil No. 678-62. Judgment for defendant, December 13, 1963 (opinion); aff'd., 340 F. 2d 801 (1964); cert. denied, 381 U.S. 904 (1965).

Wade McNeil, A-30736 (April 20, 1967)

Wade McNeil v. Udall, Civil No. 2705, D. Mont. Judgment for defendant, February 6, 1969 (opinion); no appeal.

J. W. McTiernan, 11 IBLA 284 (1973)

J. W. McTiernan v. Marvin Franklin, Acting Secretary of the Interior, Civil No. 73-481-B, W.D. Okla. Dismissed, April 4, 1974; aff'd., January 7, 1975.

J. W. McTiernan, 14 IBLA 369 (1974)

J. W. McTiernan v. Rogers C. B. Morton, Secretary of the Interior, Civil No. FS-74-42-C, W.D. Ark. Judgment for defendant, February 4, 1977.

Marathon Oil Co., 81 I.D. 447 (1974), Atlantic Richfield Co., Marathon Oil Co., 81 I.D. 457 (1974)

Marathon Oil Co. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. C 74-179, D. Wyo.

Marathon Oil Co. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. C 74-180, D. Wyo.

Atlantic Richfield Co. & Pasco, Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. C 74-181, D. Wyo.

Actions consolidated; judgment for plaintiff, 407 F. Supp. 1301 (1975); aff'd., 556 F. 2d 982 (10th Cir. 1977).

Estate of Andrew Jackson Marsh, 4 IBIA 106 (1975)

Warren Dale Ling & Francis Miles Ling, commonly known as "Frank Ling" v. Kent Frizzell, Acting Secretary of the Interior, Civil No. C-75-200, E.D. Wash. Judgment for defendant, January 27, 1976.

Appeal of Roy L. Matchett, IBCA-826-2-70 (February 26, 1971)

Roy L. Matchett v. U.S., Ct. Cl. 40-72. Dismissed with prejudice, September 25, 1973.

Billy Mathis, et al., A-30512 (July 6, 1966)

Billy Mathis, et al. v. Stewart L. Udall, et al., Civil No. 6833, D. N.M. Dismissed with prejudice, January 6, 1967; rendered moot by P.L. 89-365.

Ralph E. May, A-29014 (January 30, 1962)

Ralph E. May v. Stewart L. Udall, Civil No. 1379-62. Dismissed with prejudice, March 22, 1963; no appeal.

Estate of Oliver Maynahonah, IA-1522 (No dec.), IA-T-1 (June 30, 1966)

Ruth Maynahonah Kadayso v. Stewart L. Udall, Civil No. 66-281, W.D. Okla. Dismissed with prejudice, February 8, 1967.

Allan E. Mecham, et al., A-30244 (December 23, 1964)

Allan E. Mecham, et al. v. Stewart L. Udall, et al., Civil No. C-22-65, D. Utah. Motion to dismiss granted, May 11, 1965; aff'd., 369 F. 2d 1 (10th Cir. 1966); no petition.

Salvatore Megna, Guardian, Philip T. Garigan, 65 I.D. 33 (1958)

Salvatore Megna, Guardian etc. v. Fred A. Seaton, Civil No. 468-58. Judgment for plaintiff, November 16, 1959; motion for reconsideration denied, December 2, 1959; no appeal.

Philip T. Garigan v. Stewart L. Udall, Civil No. 1577 Tux., D. Ariz. Preliminary injunction against defendant, July 27, 1966; supplemental dec. rendered September 7, 1966; judgment for plaintiff, May 16, 1967; no appeal.

Meva Corp., 76 I.D. 205 (1969)

Meva Corp. v. U.S., Ct. Cl. No. 492-69. Judgment for plaintiff, 511 F. 2d 548 (1975).

Albert P. Mickunas, 12 IBLA 275 (1973)

Albert P. Mickunas v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-1820 WPG, C.D. Cal. Dismissed with prejudice, September 30, 1974; dismissed, May 14, 1976; rehearing denied, June 3, 1976; cert. denied, November 8, 1976.

Donald E. Miller, 2 IBLA 309 (1971), 15 IBLA 95 (1974)

Donald E. Miller v. Walter J. Hickel, et al., Civil No. C-70-2328, D. Cal. Remanded to the Department for further proceedings, July 5, 1973; dismissed with prejudice, February 6, 1975.

Duncan Miller, A-27620 (July 28, 1958)

Duncan Miller v. Fred A. Seaton, Civil No. 346-60. Judgment for defendant, February 23, 1961; aff'd., 307 F. 2d 676 (1962); cert. denied, 371 U.S. 967 (1963); rehearing denied, 372 U.S. 950 (1963).

Duncan Miller, Louise Cuccia, 66 I.D. 388 (1959)

Louise Cuccia & Shell Oil Co. v. Stewart L. Udall, Civil No. 562-60. Judgment for defendant, June 27, 1961; no appeal.

Duncan Miller, A-28008 (August 10, 1959), A-28093 et al. (October 30, 1959), A-28133 (December 22, 1959), A-28378 (August 5, 1960), A-28258 et al. (February 10, 1960).

Duncan Miller v. Stewart L. Udall, Civil No. 3470-60. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); no petition.

Duncan Miller, A-28057 (October 16, 1959), A-28398 (August 31, 1960), A-28359 (July 18, 1960), A-28433 (August 30, 1960), A-28293, A-28436 (June 7, 1960), A-27897, A-27914, A-27923, A-27930, A-28003, A-28014 (March 31, 1959), A-27810 (January 16, 1959).

Duncan Miller v. Stewart L. Udall, Civil No. 3931-60. Judgment for defendant, April 4, 1963; aff'd., per curiam dec., February 7, 1964; no petition.

Duncan Miller v. Stewart L. Udall, Civil No. 1642-64. Dismissed with prejudice, August 13, 1964; aff'd., January 12, 1965; no petition.

Duncan Miller, A-28528 et al. (February 10, 1960)

Betty J. Lewis v. Stewart L. Udall, Civil No. 3904-60. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); no petition.

Duncan Miller, A-28509 (October 20, 1960)

Duncan Miller v. Stewart L. Udall, Civil No. 187-61. Judgment for defendant, May 24, 1963; no appeal.

Duncan Miller, A-28172 (February 11, 1960), A-28267 (June 8, 1960)

Duncan Miller v. Stewart L. Udall, Civil No. 3932-60. Judgment for defendant, May 22, 1963; aff'd., February 7, 1964; no petition.

Duncan Miller v. Stewart L. Udall, Civil No. 1642-64. Dismissed with prejudice, August 13, 1964; aff'd., January 12, 1965; no petition.

Duncan Miller, A-28586, A-28633, A-28671, A-28686 (January 25, 1961)

Duncan Miller v. Stewart L. Udall, Civil No. 1268-61. Judgment for defendant, September 28, 1962; appeal dismissed (1963).

Duncan Miller, A-28647 (July 20, 1961)

Duncan Miller v. Stewart L. Udall, Civil No. 3409-61. Judgment for defendant, May 21, 1963; no appeal.

Duncan Miller, A-29312 (January 29, 1962)

Duncan Miller v. Stewart L. Udall, Civil No. 1381-62. Judgment for defendant, November 21, 1962 (opinion); appeal dismissed April 12, 1963.

Duncan Miller, A-28937 (September 25, 1962), A-29041 (November 7, 1962)

Duncan Miller v. Stewart L. Udall, Civil No. 4003-62. Dismissed for want of prosecution, May, 1966.

Duncan Miller, A-29365 (July 1, 1963), A-29521 (August 29, 1963), & A-29633 (September 5, 1963).

Duncan Miller v. Stewart L. Udall, Civil No. 2413-63. Dismissed, October 2, 1967; no appeal.

Duncan Miller, 70 I.D. 1 (1963)

Duncan Miller v. Stewart L. Udall, Civil No. 931-63. Dismissed for lack of prosecution, April 21, 1966; no appeal.

Duncan Miller, Samuel W. McIntosh, 71 I.D. 121 (1964)

Samuel W. McIntosh v. Stewart L. Udall, Civil No. 1522-64. Judgment for defendant, June 29, 1965; no appeal.

Duncan Miller, A-29900 (March 5, 1964), A-30067 (March 12, 1964)

Duncan Miller v. Stewart L. Udall, Civil No. 689-64. Dismissed for failure to prosecute, July 6, 1966.

Duncan Miller, A-30213 (April 8, 1964), A-30192 (April 9, 1964), A-30212 (July 13, 1964)

Duncan Miller v. Stewart L. Udall, Civil No. 1829-64. Judgment for defendant, September 28, 1965; no appeal.

Duncan Miller, A-30122 (September 23, 1964), A-30451 (November 17, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. 2543-64. Motion to amend granted, February 15, 1966; dismissed, April 3, 1969; no appeal.

Duncan Miller, A-30270 (May 5, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. C-153-65, D. Utah. Judgment for defendant, November 15, 1965; aff'd., 368 F. 2d 548 (10th Cir. 1966); no petition.

Duncan Miller, A-30434 (June 8, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. 9477, N.D. Cal. Judgment for defendant, June 27, 1966; no appeal.

Duncan Miller, A-30393 (June 30, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. 2384-65. Judgment for defendant, October 12, 1966; dismissed May 22, 1967; supp. complaint dismissed June 12, 1967; appeal dismissed April 12, 1968; petition for mandamus denied, October 14, 1968.

Duncan Miller, A-30517 (April 28, 1966)

Duncan Miller v. Stewart L. Udall, Civil No. 5047, D. Wyo. Judgment for defendant, August 11, 1966; appeal dismissed, September 14, 1967.

Duncan Miller, A-30546 (August 10, 1966), A-30566 (August 11, 1966), & 73 I.D. 211 (1966)

Duncan Miller v. Udall, Civil No. C-167-66, D. Utah. Dismissed with prejudice, April 17, 1967; no appeal.

Duncan Miller, A-30570 (August 3, 1966)

Duncan Miller v. Stewart L. Udall, Civil No. A-139-66, D. Alas. Judgment for defendant, March 13, 1967; motion for reconsideration denied, September 19, 1967; no appeal.

Duncan Miller, A-29231 (February 5, 1963)
See Lucille S. West, Duncan Miller, et al.

Duncan Miller, A-30669 (November 8, 1966)

Duncan Miller v. Director of the Bureau of Land Management, Civil No. 779, D. Mont. Judgment for defendant, April 25, 1969; no appeal.

Duncan Miller, A-30628 (November 16, 1966), A-30684 (January 19, 1967), A-30708 (November 16, 1966), A-30797 (September 12, 1967)

Duncan Miller v. Secretary of the Interior & his officers, Civil No. 7334, D. N.M. Dismissed with prejudice, August 28, 1968; motion to set aside judgment denied, September 24, 1968; motion for reconsideration denied, November 4, 1968.

Duncan Miller, A-30891 (March 5, 1968)

Duncan Miller v. Udall, Civil No. 745-68. Dismissed with prejudice, October 14, 1968; no appeal.

Duncan Miller, A-30924 (November 13, 1968), A-30934 (November 22, 1968), A-30966 (October 29, 1968), A-31054 (August 21, 1969)

Duncan Miller v. Secretary of the Interior, Civil No. 52-69. Amended complaint dismissed without prejudice, July 20, 1970; motion to reinstate case denied, January 6, 1972; motion for reconsideration denied, February 7, 1972.

Duncan Miller, A-31087 (February 4, 1970), A-31095 (February 2, 1970), A-31148 (March 2, 1970), A-31159 (March 2, 1970)

Duncan Miller v. Officers of the BLM & Dept. of the Interior, Civil No. 1393-70. Dismissed for failure to prosecute, January 4, 1971; no appeal.

Duncan Miller, 4 IBLA 274 (1972)

Duncan Miller v. Adjudicative Officers of the U.S. Geological Survey, Tulsa, Okla., & the Adjudicative Officers of the Bureau of Land Management, Civil No. 73-C-96, N.D. Okla. Dismissed with prejudice, November 2, 1973; motion for rehearing denied, November 14, 1973; appeal dismissed, February 8, 1974.

Duncan Miller, 6 IBLA 283 (1972), 6 IBLA 507 (1972), 7 IBLA 343 (1972)

Duncan Miller v. Adjudicative Officers of the Bureau of Land Management, Dept. of the Interior, Civil No. 1757-72. Judgment for defendant, February 7, 1973; motion to set aside judgment denied, March 5, 1973.

Duncan Miller, 7 IBLA 343 (1972), 16 IBLA 24 (1974), 16 IBLA 71 (1974), 16 IBLA 379 (1974)

Duncan Miller v. Bureau of Land Management, Department of the

Interior, Secretary of the Interior, Civil No. 74-1488. Dismissed, December 4, 1974.

Duncan Miller v. Adjudicative Officers of the Billings Bureau of Land Management, Civil No. 74-53-BLG, D. Mont. Dismissed, October 31, 1974; motion to amend complaint denied, December 18, 1974.

Duncan Miller v. Adjudicate Officers of the Billings Bureau of Land Management, Civil No. 1146, D. Mont. Dismissed, June 29, 1973; appeal not pursued by plaintiff.

Duncan Miller v. Officers of the Department of the Interior, Civil No. 76-48 BLG, D. Mont. Suit pending.

Duncan Miller, 10 IBLA 27 (1973)

Duncan Miller v. Administrative Officers of the Bureau of Land Management & Dept. of the Interior, Civil No. 1035-73. Dismissed, October 30, 1973; motions for reconsideration denied respectively, December 4, 1973, January 4, 1974, & April 5, 1974; appeal dismissed, August 27, 1975; motion for rehearing denied, August 27, 1975; motion for reconsideration denied, November 6, 1975; application for extension of time to file writ of certiorari filed; no petition.

Duncan Miller, 12 IBLA 199, 201, 206 (1973), 73 IBLA 319, 406, 407, 410, 411, 412, 74 IBLA 12, 16 (Order of dismissal dated July 17, 1973)

Duncan Miller v. The Board of Land Appeals, Department of the Interior, Civil No. 1929-73. Dismissed, February 15, 1974; appeal dismissed, August 27, 1975; motion for rehearing denied, August 27, 1975; motion for reconsideration denied, November 6, 1975; application for extension of time to file writ of certiorari filed; no petition.

Duncan Miller, 12 IBLA 201 (1973), 12 IBLA 206 (1973)

Duncan Miller v. Admin. Officers, California Bureau of Land Management, Civil No. S-2471, D. Cal. Dismissed, June 25, 1973; motion for rehearing filed June 29, 1973.

Duncan Miller, 15 IBLA 275 (1974), Order, May 13, 1974

Duncan Miller v. Operating Officers of the Bureau of Land Management, The Department of the Interior, & The Hon. Secretary of the Interior (Nominal Defendant), Civil No. 74-1116. Dismissed, October 22, 1974; no appeal.

Duncan Miller, 19 IBLA 133 (1975), 19 IBLA 188 (1975), 20 IBLA 1 (1975), 20 IBLA 9 (1975), 20 IBLA 19 (1975), IBLA 75-379 (dismissed by order, March 20, 1975), IBLA 75-365 (dismissed by order, March 24, 1975).

Duncan Miller v. The Honorable Secretaries of the Interior, etc., et al., Civil No. 75-0905. Complaint dismissed, August 8, 1975; reconsideration denied, September 16, 1975.

Duncan Miller, 19 IBLA 133 (1975), 19 IBLA 188 (1975), 20 IBLA 1 (1975), 20 IBLA 9 (1975), 20 IBLA 19 (1975), 21 IBLA 50 (1975), 22 IBLA 52 (1975), IBLA 75-379 (dismissed by order, March 20, 1975), IBLA 75-365 (dismissed by order, March 24, 1975), IBLA 75-251, 75-289, 75-326, 75-327, 75-382, 75-426 (dismissed by orders, April 30, 1975), IBLA 75-278 (dismissed by order, May 22, 1975). See also Evelyn R. Robertson.

Duncan Miller v. The Honorable Secretaries of the Interior, etc., et al., Civil No. 75-2138. Dismissed; appeal dismissed.

John R. Mimick, et al., 25 IBLA 107 (1976)

John R. Mimick, James W. Belmont, Thomas J. Lauvetz & Arthur J. Denney v. Thomas Kleppe, Individually & in his capacity as Secretary of the Interior, Civil No. 76-0-240, D. Neb. Dismissed without prejudice, December 21, 1976.

Mitchell Energy Corp., 32 IBLA 244 (1977)

Mitchell Energy Corp. v. Cecil D. Andrus, Individually & as Secretary of the Interior, Civil No. 77-2165. Suit pending.

H. D. Mollohan & Eagle Tail Ranch, A-29335 (July 8, 1963)

H. D. Mollohan, et al. v. Warren J. Gray, et al., Civil No. 4877 Phx., D. Ariz. Judgment for defendant, November 13, 1967; aff'd., 413 F. 2d 349 (9th Cir. 1969); no petition.

Howard S. Mollring, A-29498 (July 26, 1963)

Howard S. Mollring v. J. E. Keough, et al., Civil No. C-200-63, D. Utah. Judgment for defendant, January 8, 1964; no appeal.

Monturah Co., 10 IBLA 347 (1973)

Charles S. Pashayan, Lillie A. Pashayan, Charles S. Pashayan, Jr., & Suzanne Lillie Pashayan, Co-partners, d/b/a Monturah Co. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 74-1083, (9th Cir.). Dismissed for

lack of jurisdiction, April 24, 1974; Civil No. F-74-5-Civ, E.D. Cal. Dismissed without prejudice, April 11, 1974.

Bobby Lee Moore, et al., 72 I.D. 505 (1965)
Anquita L. Kluenter, et al., A-30483 (November 18, 1965)

Gary Carson Lewis, etc., et al. v. General Services Administration, et al., Civil No. 3253, S.D. Cal. Judgment for defendant, April 12, 1965; aff'd., 377 F. 2d 499 (9th Cir. 1967); no petition.

Henry S. Morgan, et al., 65 I.D. 369 (1958)

Henry S. Morgan v. Stewart L. Udall, Civil No. 3248-59. Judgment for defendant, February 20, 1961 (opinion); aff'd., 306 F. 2d 799 (1962); cert. denied, 371 U.S. 941 (1962).

Morrison-Knudsen Co., 64 I.D. 185 (1957)

Morrison-Knudsen Co. v. U.S., Ct. Cl. No. 239-61. Remanded to Trial Comm'r., 345 F. 2d 833 (1965); Commr's. report adverse to U.S. issued June 20, 1967; judgment for plaintiff, 397 F. 2d 826 (1968); part remanded to the Board of Contract Appeals; stipulated dismissal on October 6, 1969; judgment for plaintiff, February 17, 1970.

Mildred A. Moss, et al., 28 IBLA 364 (1977), Reconsideration denied, March 18, 1977.

Mildred A. Moss, Emily C. Biester, Donald E. Howell, Robert C. Pass & Thomas L. Williams v. Cecil D. Andrus, Secretary of the Interior, Arthur W. Zimmerman, State Director, Bureau of Land Management & Raul E. Martinez, Chief, Minerals Section, Bureau of Land Management, Civil No. CIV 77-234 B, D. N.M. Judgment for defendant, November 1, 1977.

Glenn Munsey, Earnest Scott, & Arnold Scott v. Smitty Baker Coal Co., 1 IBMA 208 (1972), 8 IBMA 43 (1977)

Glenn Munsey, Arnold Scott, & Earnest Scott, Miners v. Rogers C. B. Morton, Secretary of the Interior, et al., No. 72-2095, United States Court of Appeals for the District of Columbia Circuit. Vacated & remanded, 507 F. 2d 1202 (1974).

Glenn Munsey v. Smitty Baker Coal Co., Ralph Baker, Smitty Baker, & P & P Coal Co., 84 I.D. 336 (1977)

Glenn Mursey v. Cecil D. Andrus, No. 77-1619, United States Ct. of Appeals, D. C. Cir. Suit pending.

Navajo Tribe of Indians v. State of Utah, 80 I.D. 441 (1973)

Navajo Tribe of Indians v. Rogers C. B. Morton, Secretary of the Interior, Joan B. Thompson, Martin Ritvo, & Frederick Fishman, members of the Board of Land Appeals, Dept. of the Interior, Civil No. C-308-73, D. Utah. Suit pending.

New York State Natural Gas Corp., A-28687 (July 19, 1962)

Jacob N. Wasserman v. Stewart L. Udall, Civil No. 3207-62. Judgment for defendant, 234 F. Supp. 651 (1964); no appeal.

Jess H. Nicholas, Jr., A-30065 (October 13, 1964)

Jess H. Nicholas, Jr. v. Stewart L. Udall, Civil No. A-67-64, D. Alas. Judgment for defendant, September 17, 1965; aff'd., 385 F. 2d 177 (9th Cir. 1967); no petition.

Robert D. Nininger, Appellant, Paul C. Kohlman, Appellee, 16 IBLA 200 (1974)

Robert D. Nininger v. Rogers C. B. Morton & Kenneth J. Sire, Civil No. 74-1246. Defendant's motion for summary judgment granted, March 20, 1975; no appeal.

Leonard E. Noren, A-27583 (September 13, 1960)

Leonard E. Noren v. Walter E. Beck, Civil No. 2139 ND, S.D. Cal. Judgment for defendant, 199 F. Supp. 708 (1961).

Leonard E. Noren v. Walter E. Beck, Civil No. 2347 ND, S.D. Cal. Judgment for plaintiff, September 17, 1965; rev'd. & remanded sub nom. Robert E. McCarthy, successor to Walter E. Beck v. Leonard E. Noren, et al., rev'd. & remanded, 370 F. 2d 845 (9th Cir. 1966); cert. denied, 387 U.S. 917 (1967).

Appeal of North Star Aviation Corp., IBCA-741 (May 19, 1969)

North Star Aviation Corp. v. U.S., Ct. Cl. No. 264-69. Commr's. report adverse to U.S. issued December 10, 1971; judgment for plaintiff, 458 F. 2d 64 (1972).

Richard L. Oelschlaeger, 67 I.D. 237 (1960)

Richard L. Oelschlaeger v. Stewart L. Udall, Civil No. 4181-60. Dismissed, November 15, 1963; case reinstated, February 19, 1964; remanded, April 4, 1967; rev'd. & remanded with directions to enter judgment for appellant, 389 F. 2d 974 (1968); cert. denied, 392 U.S. 909 (1968).

Oil and Gas Leasing on Lands Withdrawn By Executive Orders for Indian Purposes in Alaska, 70 I.D. 166 (1963)

Mrs. Louise A. Pease v. Stewart L. Udall, Civil No. 760-63, D. Alas. Withdrawn April 18, 1963.

Superior Oil Co. v. Robert L. Bennett, Civil No. A-17-63, D. Alas. Dismissed, April 23, 1963.

Native Village of Tyonek v. Robert L. Bennett, Civil No. A-15-63, D. Alas. Dismissed, October 11, 1963.

Mrs. Louise A. Pease v. Stewart L. Udall, Civil No. A-20-63, D. Alas. Dismissed, October 29, 1963 (oral opinion); aff'd., 332 F. 2d 62 (9th Cir. 1964); no petition.

George L. Gucker v. Stewart L. Udall, Civil No. A-39-63, D. Alas. Dismissed without prejudice, March 2, 1964; no appeal.

Oil Resources, Inc., 28 IBLA 394; 84 I.D. 91 (1977)

Oil Resources Inc. v. Cecil D. Andrus, Secretary of the Interior, Civil No. C-77-0147, D. Utah. Suit pending.

Estate of Rose Old Bear Wilson, 4 IBIA 62, (1975)

James Harold Kindness & Sherman Wilson, Jr. v. Kent Frizzell, Acting Secretary, Department of the Interior, Civil No. 75-76-Blg, D. Mont. Judgment for defendant, April 9, 1976.

Old Ben Coal Co., 81 I.D. 428, 81 I.D. 436, 81 I.D. 440 (1974)

Old Ben Coal Corp. v. Interior Board of Mine Operations Appeals, et al., Nos. 74-1654, 74-1655, 74-1656, United States Court of Appeals for the 7th Cir. Board's decision aff'd., June 13, 1975; reconsideration denied, June 27, 1975.

Old Ben Coal Co., 82 I.D. 355 (1975)

United Mine Workers of America v. U.S. Interior Board of Mine Operations Appeals, No. 75-1852, United States Court of Appeals, D.C. Circuit. Vacated & remanded with instructions to dismiss as moot, June 10, 1977.

Old Ben Coal Co., 84 I.D. 459 (1977)

United Mine Workers of America v. Cecil D. Andrus, No. 77-1840, United States Ct. of Appeals, D. C. Cir. Suit pending.

Susie Ondola, 17 IBLA 359 (1974) See Virginia Gail Atchison

George Ondola, 17 IBLA 363 (1974) See Virginia Gail Atchison

Joseph I. O'Neill, Jr., A-30488 (April 19, 1966), A-30488 (Supp.) (December 7, 1966)

Joseph I. O'Neill, Jr. v. Stewart L. Udall, Civil No. 3556-SD-K, S.D. Cal. Remanded to the Dept. for clarification of Departmental decision, August 12, 1966; order denying defendant's motion for summary judgment, without prejudice & remanding case for clarification of the affirmance of the Departmental decision, March 8, 1967; no appeal; stipulated dismissal, November 22, 1971.

Appeal of Ounalashka Corp., 1 ANCAB 104; 83 I.D. 475 (1976)

Ounalashka Corp., for & on behalf of its Shareholders v. Thomas Kleppe, Secretary of Interior, & his successors & predecessors in office, et al., Civil No. A76-241 CIV, D. Alas. Suit pending.

Oyate Inc., et al., IA-2629 (Still pending)

Oyate, Inc. a non profit South Dakota Corp., et al. v. Rogers C. B. Morton, Civil No. 687-73. Dismissed, January 7, 1974.

Eugene C. Paine, et al., A-27632 (August 21, 1958)

Eugene C. Paine, et al. v. Stewart L. Udall, Civil No. 2607-58. Judgment for plaintiff, September 24, 1959; vacated & remanded, Wright v. Seaton, Misc. 1403, January 11, 1960. Judgment for plaintiff, May 4, 1960; rev'd. & remanded, February 23, 1961; judgment for defendant, March 20, 1961; no petition.

Irene Mitchell Pallin, A-28766 (September 21, 1962)

Irene Mitchell Pallin v. U.S. & Edward Elmer Mitchell, Jr., Civil No. 47552, N.D. Cal. Judgment for plaintiff, December 16, 1970; rev'd., 496 F. 2d 27 (9th Cir. 1974); no petition.

Pan American Petroleum Corp., IA-840 (December 18, 1959)

Pan American Petroleum Corp. v. Stewart L. Udall, Civil No. 960-60. Judgment for plaintiff, 192 F. Supp. 626 (1961); subsequent administrative appeal & supplemental complaint filed; judgment for plaintiff, February 16, 1966; no appeal.

Jack W. Parks v. L & M Coal Corp., 83 I.D. 710 (1976)

Jack W. Parks v. Thomas S. Kleppe, No. 76-2052, United States Ct. of Appeals, D. C. Cir. Voluntary dismissal, May 4, 1977.

Paul Jarvis, Inc., 64 I.D. 285 (1957)

Paul Jarvis, Inc. v. U.S., Ct. Cl. No. 40-58. Stipulated judgment for plaintiff, December 19, 1958.

Perry & Wallis, Inc., IBCA-617 (July 16, 1968)

Perry & Wallis, Inc. v. U.S., Ct. Cl. 365-68. Judgment for defendant, 427 F. 2d 722 (1970).

Peter Kiewit Sons' Co., 72 I.D. 415 (1965)

Peter Kiewit Sons' Co. v. U.S., Ct. Cl. 129-66. Judgment for plaintiff, May 24, 1968.

Estate of Pete-Goh-Deh-Dil (Joe Pete), IA-1322 (June 7, 1966)

Don & Winona James v. Mabel George Gomez, et al., Civil No. S-66-104, E.D. Cal. Dismissed with prejudice as to defendants Udall, Crow & Hall, May 22, 1969; dismissed with prejudice as to defendant Gomez, September 1, 1970.

Curtis D. Peters, 80 I.D. 595 (1973)

Curtis D. Peters v. U.S., Rogers C. B. Morton, as Secretary of the Interior, Civil No. C-75-0201 RFP, N.D. Cal. Judgment for defendant, December 1, 1975; no appeal.

M. Blaine Peterson, A-28111 (November 23, 1959)

L. Robert Anderson v. Stewart L. Udall, Civil No. 3953-60. Dismissed without prejudice, November 13, 1961; no appeal.

Petroleum Ownership Map Co., IBCA-110 (May 29, 1958)

Petroleum Ownership Map Co. v. U.S., Ct. Cl. 269-62. Judgment for plaintiffs, 389 F. 2d 793 (1968).

City of Phoenix v. Alvin B. Reeves, et al., 81 I.D. 65 (1974)

Alvin B. Reeves, Genevieve C. Rippey, Leroy Reeves & Thelma Reeves, as heirs of A. H. Reeves, Deceased v. Rogers C. B. Morton, Secretary of the Interior & The City of Phoenix, a municipal Corp., Civil No. 74-117 PHX-WPC, D. Ariz. Dismissed with prejudice, August 9, 1974; reconsideration denied, September 24, 1974; no appeal.

Harold Ladd Pierce, 69 I.D. 14 (1962)

Duncan Miller v. Stewart L. Udall, Civil No. 1351-62. Judgment for defendant, August 2, 1962; aff'd., 317 F. 2d 573 (1963); no petition.

Platte Valley Construction Co., IBCA-168 (August 28, 1958)

George Stanek, et al. v. U.S., Ct. Cl. 189-62. Compromised.

Pocahontas Fuel Co., 83 I.D. 690 (1976)

Howard Mullins v. Cecil D. Andrus, No. 77-1087, United States Ct. of Appeals, D. C. Cir. Suit pending.

Pocahontas Fuel Co., 84 I.D. 489 (1977)

Pocahontas Fuel Co., Div. of Consolidation Coal Co. v. Cecil D. Andrus, No. 77-2239, United States Ct. of Appeals, 4th Cir. Suit pending.

John M. Pomeroy, A-28134 (January 13, 1960)

John M. Pomeroy v. Walter E. Beck, Civil No. 8033, N.D. Cal. Dismissed by plaintiff, August 15, 1961; no appeal.

Port Blakely Mill Co., 71 I.D. 217 (1964)

Port Blakely Mill Co. v. U.S., Civil No. 6205, W.D. Wash. Dismissed with prejudice, December 7, 1964.

L. O. Power, et al., 22 IBLA 15 (1975)

L. O. Power, Ellis J. & Lois Dover, & Noble Ribelin v. U.S. & Kent Frizzell, Acting Secretary of the Interior, Civil No. CIV 75-708 PHX WPC, D. Ariz. Suit pending.

Property Management Co., A-29144 (August 19, 1963)

Property Management Co. v. Stewart L. Udall, Civil No. 64-28, D. Ore. Judgment for defendant, 255 F. Supp. 382 (1966); appeal dismissed, October 13, 1966. See Linn Land Co. v. Udall.

Nola Grace Ptasynski, Barbara C. Lisco, 19 IBLA 125 (1975), 26 IBLA 340 (1976) (Supp.)

Barbara C. Lisco v. The Honorable Stanley K. Hathaway, Secretary of the Interior, et al., Civil No. 75-281, D. N.M. Remanded to the Department, April 3, 1976.

Nola Grace Ptasynski v. The Honorable Stanley K. Hathaway, Secretary of the Interior, et al., Civil No. 75-282, D. N.M. Remanded to the Department, April 6, 1976; Judgment for defendants, May 5, 1977.

R. E. Puckett, A-30419 (October 29, 1965)

Robert E. Puckett v. Stewart L. Udall, Secretary of the Interior, Civil No. 2786-65. Dismissed without prejudice, August 15, 1966.

Ethel C. Radzewicz, et al., A-30866 (January 29, 1968)

Georgette B. Lee (Hall) v. Udall, Civil No. 985-68. Judgment for defendant, October 30, 1969; dismissed, November 17, 1970.

Estate of John S. Ramsey (Wap Tose Note) (Nez Perce Allottee No. 853, Deceased), 81 I.D. 298 (1974)

Clara Ramsey Scott v. U.S. & Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 3-74-39, D. Idaho. Dismissed with prejudice, August 11, 1975; no appeal.

Ray D. Bolander Co., 72 I.D. 449 (1965)

Ray D. Bolander Co. v. U.S., Ct. Cl. 51-66. Judgment for plaintiff, December 13, 1968; subsequent Contract Officer's dec., December 3, 1969; interim dec., December 2, 1969; Order to Stay Proceedings until March 31, 1970; dismissed with prejudice, August 3, 1970.

Estate of Elgin Red Elk, IA-1230 (November 13, 1964)

Bert Taunah, et al. v. Stewart Udall, Civil No. 65-82, W.D. Okla. Judgment for plaintiff, April 27, 1967; rev'd. & remanded, 398 F. 2d 795 (10th Cir. 1968); no petition.

Estate of Crawford J. Reed (Unallotted Crow No. 6412), 1 IBIA 326; 79 I.D. 621 (1972)

George Reed, Sr. v. Rogers Morton, et al., Civil No. 1105, D. Mont. Dismissed, June 14, 1973; no appeal.

Reliable Coal Corp., 1 IBMA 97; 79 I.D. 139 (1972)

Reliable Coal Corp. v. Rogers C. B. Morton, Secretary of the Interior, et al., No. 72-1477 United States Court of Appeals, 4th Cir. Aff'd., 478 F. 2d 257 (4th Cir. 1973).

Republic Steel Corp., 82 I.D. 607 (1975)

Republic Steel Corp. v. Interior Board of Mine Operations Appeals, No. 76-1041, United States Ct. of Appeals, D. C. Cir. Rev'd. & remanded, February 22, 1978.

R. G. Brown, Jr. & Co., IBCA-356 (July 26, 1963)

Robert G. Brown, Jr., et al. v. U.S., Ct. Cl. No. 373-63. Judgment for plaintiff, April 6, 1965; no appeal.

Richfield Oil Corp., 62 I.D. 269 (1955)

Richfield Oil Corp. v. Fred A. Seaton, Civil No. 3820-55. Dismissed without prejudice, March 6, 1958; no appeal.

Mark B. Ringstad, et al., Inlet Oil Corp., et al., Robert L. Lawler, et al., A-31111, A-31115, A-31134, A-31118 (March 17, 1970)

Robert Lawler, et al. v. Walter J. Hickel, Civil No. F-14-70, D. Alas.

Inlet Oil Corp. & Raymond J. Ellis v. Walter J. Hickel, Civil No. A-48-70, D. Alas. Stipulated dismissal without prejudice, August 11, 1970.

Actions consolidated, June 26, 1970. Judgment for defendant, February 22, 1972; no appeal.

Hugh S. Ritter, Thomas M. Bunn, 72 I.D. 111 (1965), Reconsideration denied by letter decision dated June 23, 1967, by the Under Secretary.

Thomas M. Bunn v. Stewart L. Udall, Civil No. 2615-65. Remanded, June 28, 1966.

Estate of William Cecil Robedeaux, 1 IBIA 106, 78 I.D. 234 (1971), IBIA 71-5 (Supp. 1) (August 16, 1974), 80 I.D. 390 (1973)

Oneta Lamb Robedeaux, et al. v. Rogers C. B. Morton, Civil No. 71-646, D. Okla. Dismissed, January 11, 1973.

Houston Bus Hill v. Rogers C. B. Morton, Civil No. 72-376, W.D. Okla. Judgment for plaintiff, October 29, 1973; amended judgment for plaintiff, November 12, 1973; appeal dismissed, June 28, 1974.

Houston Bus Hill & Thurman S. Hurst v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 73-528-B, W.D. Okla. Judgment for plaintiff, April 30, 1975; corrected judgment, May 2, 1975; per curiam dec., vacated & remanded, October 2, 1975; judgment for plaintiff, December 1, 1975.

Evelyn R. Robertson, et al., Duncan Miller, A-29251 (March 21 1963), (see Duncan Miller, 20 IBLA 1 (1975))

Duncan Miller v. Stewart L. Udall, Civil No. 1066-63. Judgment for defendant, March 13, 1964; aff'd., 349 F. 2d 193 (1965); cert. denied, 385 U.S. 929 (1966); rehearing denied, 385 U.S. 1021 (1966).

W. C. Wells v. Stewart L. Udall, Civil No. A-37-63, D. Alas. Dismissed with prejudice, September 7, 1965; no appeal.

Evelyn R. Robertson v. Stewart L. Udall, Civil No. 1561-63. Judgment for defendant, April 4, 1964; aff'd., 349 F. 2d 195 (1965); no petition.

Richard W. Rowe, Daniel Gaudiane, 82 I.D. 174 (1975)

Richard W. Rowe, Daniel Gaudiane v. Stanley K. Hathaway, in his official capacity as Secretary of the Interior, Civil No. 75-1152. Judgment for defendant, July 29, 1976.

Frank Roybal, Jr. v. U.S. Steel Corp., 7 IBMA 238 (1977)

Frank Roybal, Jr. v. Cecil D. Andrus, No. 77-1307, United States Ct. of Appeals, D. C. Cir. Suit pending.

Edgar Rundle, A-29593 (August 2, 1963)

Edgar Rundle v. Stewart L. Udall, Civil No. 191-65. Judgment for defendant, September 22, 1965; aff'd., 379 F. 2d 112 (1967); cert. denied, 389 U.S. 845 (1967).

Estate of James Running Horse, IA-1048 (May 26, 1960)

Mary Hit Him Running Horse v. Stewart L. Udall, Civil No. 2106-68. Judgment for plaintiff, 211 F. Supp. 586 (1962); no appeal.

Louise Safarik, A-28307 et al. (April 22, 1960)

John J. King v. Stewart L. Udall, Civil No. 3903-60. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); no petition.

Louise Safarik, et al., A-28562 et al. (January 26, 1961)

Louise Safarik v. Stewart L. Udall, Civil No. 1081-61. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); cert. denied, 371 U.S. 901 (1962).

Samuel Gary v. Stewart L. Udall, Civil No. 1202-61. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); no petition.

Rune E. S. Safve, 13 IBLA 212 (1973)

Rune E. S. Safve v. Secretary of the Interior, Interior Board of Land Appeals, Dir., Bureau of Land Management, State Dir., Alaska, Bureau of Land Mgmt., Civil No. A-173-73 CIV, D. Alas. Dismissed, March 4, 1975; reinstated by court order, April 9, 1975; remanded to the Bureau of Land Management for proceedings, March 19, 1976.

Louis Samuel, et al., 8 IBLA 268 (1972)

Charles M. Goad v. U.S. & Rogers Morton, Secretary of the Interior, Civil No. 9948, D. N.M. Dismissed with prejudice, January 16, 1974.

Joseph & Jean Maisano v. Rogers C. B. Morton, Secretary of the Interior, Bureau of Land Mgmt., & Board of Land Appeals, Civil No. 39720, E.D. Mich. Dismissed, October 12, 1973 (opinion); no appeal.

Gordon W. & Alleyne J. Laatz v. Rogers C. B. Morton, et al., Civil No. 03266, E.D. Mich. Dismissed, February 20, 1975 (opinion).

Louis Samuel v. Rogers C. B. Morton, Secretary of the Interior, Civil No. CV-74-1112-EC, C.D. Cal. Dismissed with prejudice, August 26, 1974; no appeal.

San Carlos Mineral Strip, 69 I.D. 195 (1962)

James Houston Bowman v. Stewart L. Udall, Civil No. 105-63. Judgment for defendant, 243 F. Supp. 672 (1965); aff'd., sub nom. S. Jack Hinton, et al. v. Stewart L. Udall, 364 F. 2d 676 (1966); cert. denied, 385 U.S. 878 (1966); supplemented by M-36767, November 1, 1967.

B. F. Sandoval, Jr., A-29975 (June 12 1964)

B. F. Sandoval, Jr. v. Stewart L. Udall, Civil No. 5779, D. N.M. Judgment for plaintiff, May 11, 1965; appeal dismissed January 12, 1966; order vacating prior judgment issued January 28, 1966.

Santa Fe Sand & Gravel Co., Inc., A-30657 (April 25, 1967)

Santa Fe Sand & Gravel Co., Inc. v. Boyd L. Rasmussen, et al., Civil No. 7135, D. N.M. Summary judgment for defendant, May 28, 1968; no appeal.

Kenneth F. Santor, 13 IBLA 208 (1973)

Kenneth F. Santor v. Rogers C. B. Morton, Individually & as Secretary of the Interior, Daniel P. Baker, individually & as Dir. for the State of Wyo., Bureau of Land Mgmt., & Glenna M. Lane, individually & as Chief, O&G Section, Land Ofc., Wyo., Civil No. 5949, D. Wyo. Dismissed, November 15, 1974 (opinion); no appeal.

John W. Savage, 6 IBLA 253 (1972)

Amerada Hess Corp., Louisiana Land & Exploration Co., & Oil Shale Corp. v. Rogers C. B. Morton, Civil No. C-4361, D. Colo. Order holding matter in abeyance until 60 days after all appeals are completed in Oil Shale Corp., Supra., filed June 3, 1974.

Casper Joseph Schmand, Attorney in fact for Mike Swab, A-29451 (August 19, 1963)

Casper Joseph Schmand v. Stewart L. Udall, Civil No. 63-484, D. Ore. Judgment for defendant, 255 F. Supp. 382 (1966); appeal dismissed, October 13, 1966. See Linn Land Co. v. Udall.

Ann D. Schmidt, A-28349 (July 28, 1960)

Ann D. Schmidt v. Stewart L. Udall, Civil No. 3912-60. Judgment for defendant, April 11, 1961; no appeal.

Betty Mae Schober & John L. Richardson, A-29430 (January 8, 1964). Reconsideration denied, March 6, 1964.

John L. Richardson v. Stewart L. Udall, Civil No. 3975, D. Idaho. Remanded, 253 F. Supp. 72 (1966); no appeal.

Charles Schraier, Robert Schulein, et al., A-30814, A-30816 (November 21, 1967)

Charles Schraier v. Stewart L. Udall, Secretary of the Interior, Civil No. 427-68. Judgment for defendant, October 31, 1968; aff'd., 419 F. 2d 663 (1969); petition for rehearing en banc denied, October 8, 1969; no petition.

Joseph M. Schuck, A-28603 (August 16, 1961)

Joseph M. Schuck v. Secretary of the Interior, No. 16,682. Petition for review dismissed, December 15, 1961; no appeal.

Joseph M. Schuck v. Secretary of the Interior, Civil No. 1402 Tuc., D. Ariz. Complaint dismissed, January 30, 1962; no appeal.

Joseph M. Schuck v. Roy T. Helmandollar, Civil No. 1402 Tuc., D. Ariz. Judgment for defendant, March 19, 1962; no appeal.

Seal and Co., 68 I.D. 94 (1961)

Seal & Co. v. U.S., Ct. Cl. 274-62. Judgment for plaintiff, January 31, 1964; no appeal.

Administrative Appeal of Sessions, Inc. (A Cal. Corp.) v. Vyola Olinger Ortner (Lessor), Lease No. PSL-33, Joseph Patrick Patencio (Lessor), Lease No. PSL-36, Larry Olinger (Lessor), Lease No. PSL-41, 81 I.D. 651 (1974)

Sessions Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CV 74-3589 LTL, C.D. Cal. Dismissed with prejudice, January 26, 1976.

Sessions Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CV 74-3591 MML, C.D. Cal. Dismissed with prejudice, January 26, 1976.

Sessions Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CV 74-3590 FW, C.D. Cal. Dismissed with prejudice, January 26, 1976.

John J. Sexton, 15 IBLA 69 (1974), 20 IBLA 187 (on reconsideration)

John J. Sexton v. U.S., Rogers C. B. Morton as the Secretary of the Interior, et al., Civil No. F-74-6, D. Alas. Dismissed, January 5, 1977.

William D. Sexton, et al., 9 IBLA 316 (1973)
See William D. Sexton, et al.

William D. Sexton, et al., 9 IBLA 316 (1973), R. C. Bailey, et al., 7 IBLA 266 (1972), R. C. Bailey & C. Burglin, 10 IBLA 281 (1973), Helen S. Bailey & C. Burglin, 11 IBLA 51 (1973), Earnest G. & Dora A. Carter, C. Burglin, Michael F. Scanlan, C. Burglin, 12 IBLA 181 (1973)

C. Burglin & William D. Sexton v. Rogers C. B. Morton, et al., Civil No. F-9-73, D. Alas.

C. Burglin & R. C. Bailey v. U.S., Rogers C. B. Morton, et al., Civil No. F-15-73, D. Alas.

C. Burglin & Helen Bailey v. U.S., Rogers C. B. Morton, et al., Civil No. F-19-73, D. Alas.

C. Burglin, Earnest G. Carter, Dora A. Carter, & Michael F. Scanlan v. U.S., Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. F-21-73, D. Alas.

Actions consolidated by order dated July 23, 1974. Judgment for defendant, August 5, 1974; aff'd., 527 F. 2d 486 (9th Cir. 1976); cert. denied, 425 U.S. 973 (1976).

Steve Shapiro v. Bishop Coal Co., 83 I.D. 59 (1976)

Bishop Coal Co. v. Thomas S. Kleppe, No. 76-1368, United States Ct. of Appeals, 4th Cir. Suit pending.

John W. Shaw, A-29143 (April 5, 1963)

John W. Shaw v. Stewart L. Udall, Secretary of the Interior, Civil No. 63-602, D. Ore. Aff'd., 264 F. Supp. 390 (1967); appeal docketed March 13, 1967; appeal dismissed.

Michael Shearn, 24 IBLA 259 (1976)

Michael Shern v. Thomas S. Kleppe, Secretary of the Interior & Arthur W. Zimmerman, Director of the New Mexico State office of the Bureau of Land Management, Civil No. CIV-76-338-P, D. N.M. Judgment for defendant, February 22, 1977; appeal filed, February 28, 1977.

Shell Oil Co., A-30575 (October 31, 1966), Chargeability of Acreage Embraced in Oil & Gas Lease Offers, 71 I.D. 337 (1964)

Shell Oil Co. v. Udall, Civil No. 216-67. Stipulated dismissal August 19, 1968.

Sinclair Oil & Gas Co., 75 I.D. 155 (1968)

Sinclair Oil & Gas Co. v. Stewart L. Udall, Secretary of the Interior, et al., Civil No. 5277, D. Wyo. Judgment for defendant, sub nom. Atlantic Richfield Co. v. Walter J. Hickel, 303 F. Supp. 724 (1969); aff'd., 432 F. 2d 587 (10th Cir. 1970); no petition.

Charles T. Sink, 82 I.D. 535 (1975)

Charles T. Sink v. Thomas S. Kleppe, Secretary of the Interior - Mining Enforcement & Safety Administration (MESA), No. 75-1292, United States Ct. of Appeals, 4th Cir. Vacated without prejudice to plaintiff's rights, 529 F. 2d 601 (4th Cir. 1975).

Skelly Oil Co., 16 IBLA 264 (1974)

Skelly Oil Co. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-411, D. N.M. Judgment for plaintiff, August 7, 1975 (opinion); no appeal.

Eldon L. Smith, A-30944 (October 15, 1968)

Eldon L. Smith v. Walter J. Hickel, Civil No. 69-245, D. Ariz. Judgment for defendant, February 3, 1970.

L. B. Smith, et al., A-30447 (October 29, 1965)

Charles J. Babington v. Stewart L. Udall, Civil No. 3048-65. Dismissed without prejudice for failure of prosecution, May 1, 1967; no appeal.

Stanley C. Soho, A-28135 (August 19, 1959), A-28135 Supp. (July 17, 1961), Supplemented by decision dated February 1, 1963, by Director, Bureau of Land Management, approved by the Secretary March 18, 1963.

Robert V. Ferry & Irving Baker v. Stewart L. Udall, Civil No. 1648 Tuc., D. Ariz. Judgment for defendant, September 3, 1963; aff'd., 336 F. 2d 706 (9th Cir. 1964); cert. denied, 381 U.S. 904 (1965).

Stanley C. Soho, et al., A-28175 (April 11, 1960)

Albert Meeks v. E. I. Rowland, Civil No. 3461-Phx., D. Ariz. Case dismissed, January 17, 1961; no appeal.

Walter M. Sorensen, 32 IBLA 345 (1977)

Walter M. Sorensen v. Cecil D. Andrus, Secretary of the Interior, & Daniel P. Baker, State Director, Bureau of Land Management, Civil No. C77-250, D. Wyo. Suit pending.

Southern Pacific Co., 76 I.D. 1 (1969)

Southern Pacific Co. v. Walter J. Hickel, Secretary of the Interior, Civil No. S-1274, D. Cal. Judgment for defendant, December 2, 1970 (opinion); no appeal.

Southern Pacific Co., Louis G. Wedekind, 77 I.D. 177 (1970), 20 IBLA 365 (1975)

George C. Laden, Louis Wedekind, Mrs. Vern Lear, Mrs. Arda Fritz, & Helen Laden Wagner, heirs of George H. Wedekind, Deceased v. Rogers C. B. Morton, et al., Civil No. R-2858, D. Nev. On June 20, 1974, remanded for further agency proceedings as originally ordered in 77 I.D. 177; Dist. Ct. reserves jurisdiction; supplemental complaint filed, August 1, 1975; judgment for defendant, November 29, 1976; appeal filed January 27, 1977.

Southport Land & Commercial Co., Sacramento 075330 (January 15, 1964)

Southport Land & Commercial Co. v. Stewart L. Udall, et al., Civil No. 42385, N.D. Cal. Dismissed as to defendant Stewart Udall, 244 F. Supp. 172 (1965); aff'd., 371 F. 2d 526 (9th Cir. 1967); no petition.

Southwest Welding & Manufacturing Division, Yuba Consolidated Industries, Inc., 69 I.D. 173 (1962)

Southwest Welding v. U.S., Civil No. 68-1658-CC, C.D. Cal. Judgment for plaintiff, January 14, 1970; appeal dismissed, April 6, 1970.

Southwestern Petroleum Corp., et al., 71 I.D. 206 (1964)

Southwestern Petroleum Corp. v. Stewart L. Udall, Civil No. 5773, D. N.M. Judgment for defendant, March 8, 1965; aff'd., 361 F. 2d 650 (10th Cir. 1966); no petition.

Standard Oil Co. of California, et al., 76 I.D. 271 (1969)

Standard Oil Co. of California v. Walter J. Hickel, et al., Civil No. A-159-69, D. Alas. Judgment for plaintiff, 317 F. Supp. 1192 (1970); aff'd., sub nom. Standard Oil Co. of Cal. v. Rogers C. B. Morton, et al., 450 F. 2d 493 (9th Cir. 1971); no petition.

Standard Oil Co. of Texas, 71 I.D. 257 (1964)

California Oil Co. v. Secretary of the Interior, Civil No. 5729, D. N.M. Judgment for plaintiff, January 21, 1965; no appeal.

Starling Brokers, et al., 6 IBLA 237 (1972)

Hillin L. Arnold, et al. v. Rogers C. B. Morton, et al., Civil No. A-157-72 Civ., D. Alas. Judgment for defendant, March 20, 1974; rev'd. & remanded, 529 F. 2d 1101 (9th Cir. 1976).

Ross Stegman, A-30812 (November 21, 1967), U.S. v. Adrian Edwards, 9 IBLA 197 (1973)

Ross Stegman v. Stewart L. Udall, Civil No. 6953 Phx., D. Ariz. Remanded to Hearing Examiner for taking of further evidence, December 12, 1969.

Adrian Edwards, Trustee for Ross Stegman, & real party in interest v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 74-58-PCT-CAM, D. Ariz. Judgment for plaintiff, September 10, 1975; appeal filed, November 6, 1975.

Billy Stewart, N.M. 4200, etc., approved by the Secretary, May 2, 1969.

D. L. Hannifin v. Walter J. Hickel, et al., Civil No. 8074, D. N.M. Judgment for defendant, January 6, 1970; remanded, May 25, 1970; judgment for defendant, May 28, 1970; aff'd., 444 F. 2d 200 (10th Cir. 1971); no petition.

Elaine S. Stickelman, 9 IBLA 327 (1973)

Elaine S. Stickelman v. U.S. & Dept. of the Interior, et al., Civil No. LV-2112, D. Nev. Judgment for defendant, August 29, 1975; amended order judgment for defendant, September 4, 1975.

Omar Stratman, 16 IBLA 222 (1974)

Omar Stratman v. The Department of the Interior, Bureau of Land Management, Civil No. A74-103, D. Alas. Remanded to the Department, May 6, 1976; appeal filed June 30, 1976.

Florence Emily Tagala v. Amanda Nellie Ruth Price, A-30715 (November 10, 1966)

Amanda Price v. Udall, Civil No. 33-67, D. Alas. Judgment for plaintiff, 280 F. Supp. 393 (1968); remanded to Bureau of Land Management, 411 F. 2d 589 (9th Cir. 1969); no petition.

James K. Tallman, 68 I.D. 256 (1961)

James K. Tallman, et al. v. Stewart L. Udall, Civil No. 1852-62. Judgment for defendant, November 1, 1962 (opinion); rev'd., 324 F. 2d 411 (1963); cert. granted, 376 U.S. 961 (1964); Dist Ct. aff'd., 380 U.S. 1 (1965); rehearing denied, 380 U.S. 989 (1965).

Texaco, Inc., 75 I.D. 8 (1968)

Texaco Inc., a Corp. v. Secretary of the Interior, Civil No. 446-68. Judgment for plaintiff, 295 F. Supp. 1297 (1969); aff'd. in part & remanded, 437 F. 2d 636 (1970); aff'd. in part & remanded, July 19, 1972.

Texas Construction Co., 64 I.D. 97 (1957), Reconsideration denied, IBCA-73 (June 18, 1957)

Texas Construction Co. v. U.S., Ct. Cl. No. 224-58. Stipulated judgment for plaintiff, December 14, 1961.

Albert Thomas, et ux. (Contestees) v. Sam A. DeVilbiss, et ux. (Contestees), 10 IBLA 56 (1973)

Albert & Ellora Thomas v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-139-TUC-WCF, D. Ariz. Judgment for defendant, 408 F. Supp. 1361 (1976); aff'd., 552 F. 2d 871 (9th Cir. 1977).

Estate of John Thomas, Deceased Cayuse Allottee No. 223 & Estate of Joseph Thomas, Deceased, Umatilla Allottee No. 877, 64 I.D. 401 (1957)

Joe Hayes v. Fred A. Seaton, Secretary of the Interior, Civil No. 859-581. Judgment for defendant, September 18, 1958; aff'd., 270 F. 2d 319 (1959); cert. denied, 364 U.S. 814 (1960); rehearing denied, 364 U.S. 906 (1960).

Thor-Westcliffe Development, Inc., 70 I.D. 134 (1963)

Thor-Westcliffe Development, Inc. v. Stewart L. Udall, Civil No. 5343, D. N.M. Dismissed with prejudice, June 25, 1963.

See also:

Thor-Westcliffe Development, Inc. v. Stewart L. Udall, et al., Civil No. 2406-61. Judgment for defendant, March 22, 1962; aff'd., 314 F. 2d 257 (1963); cert. denied, 373 U.S. 951 (1963).

Richard K. Todd, et al., 68 I.D. 291 (1961)

Bert F. Duesing v. Stewart L. Udall, Civil No. 290-62. Judgment for defendant, July 17, 1962 (oral opinion); aff'd., 350 F. 2d 748 (1965); cert. denied, 383 U.S. 912 (1966).

Atwood, et al. v. Stewart L. Udall, Civil Nos. 293-62 - 299-62, incl. Judgment for defendant, August 2, 1962; aff'd., 350 F. 2d 748 (1965); no petition.

E. B. Todhunter, A-28197 (May 23, 1960)

Victoria L. Cuccia v. Stewart L. Udall, Civil No. 3921-60. Judgment for defendant, September 17, 1963; no appeal.

Appeal of Toke Cleaners, 81 I.D. 258 (1974)

Thom Properties Inc., d/b/a Toke Cleaners & Launderers v. U.S., Department of the Interior, Bureau of Indian Affairs, Civil No. A3-74-99, D. N.D. Stipulation for dismissal & order dismissing case, June 16, 1975.

Estate of Phillip Tooisgah, 4 IBIA 189; 82 I.D. 541 (1975)

Jonathan Morris & Velma Tooisgah v. Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV-76-0037-D, W.D. Okla. Suit pending.

Tree Land Nursery, Inc., IBCA-436 (October 31, 1966)

Tree Land Nursery, Inc. v. U.S., Ct. Cl. 238-67. Judgment for plaintiff, May 13, 1969.

Tyee Construction Co., IBCA-112 & 113 (April 30, 1958)

Tyee Construction Co. v. U.S., Ct. Cl. No. 312-60. Judgment for defendant, June 1, 1962; no appeal.

Uniform Relocation Assistance Appeal of Sidney Gelb, 2 OHA 59 (1976)

Sidney Gelb v. Thomas Kleppe, individually & officially as the Secretary of Interior, Civil No. 76-1931. Suit pending.

Uniform Relocation Assistance Appeal of Numerous Navajo Persons Who Reside on Black Mesa in Arizona, 1 OHA 292 (1976)

Buck Austin, Lilly, Jack & Billy Chief, Alta Rose Albert, Betty Crank, Manymule's Daughter #2, Steven & Kee Lake, & Kee Begay v. Morris Thompson, Commissioner of Indian Affairs, Civil No. CIV-76-418-PCT-CAM, D. Ariz. Suit pending.

Union Oil Co. Bid on Tract 228, Brazos Area, Texas Offshore Sale, 75 I.D. 147 (1968), 76 I.D. 69 (1969)

The Superior Oil Co., et al. v. Stewart L. Udall, Civil No. 1521-68. Judgment for plaintiff, July 29, 1968, modified, July 31, 1968; aff'd., 409 F. 2d 1115 (1969); dismissed as moot, June 4, 1969; no petition.

Union Oil Co. of California, Ramon P. Colvert, 65 I.D. 245 (1958)

Union Oil Co. of California v. Stewart L. Udall, Civil No. 3042-58. Judgment for defendant, May 2, 1960 (opinion); aff'd., 289 F. 2d 790 (1961); no petition.

Union Oil Co. of California, et al., 71 I.D. 169 (1964), 72 I.D. 313 (1965)

Penelope Chase Brown, et al. v. Stewart Udall, Civil No. 9202, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd., 406 F. 2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd. & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., March 12, 1971; judgment for plaintiff, 370 F. Supp. 108 (1973); vacated & remanded, September 22, 1975; petition for rehearing en banc denied; cert. denied, June 21, 1976; remanded to the Dept. for further proceedings, January 17, 1977.

Equity Oil Co. v. Stewart L. Udall, Civil No. 9462, D. Colo. Order to Close Files and Stay Proceedings, March 25, 1967.

Gabbs Exploration Co. v. Stewart L. Udall, Civil No. 9464, D. Colo. Order to Close Files and Stay Proceedings, March 25, 1967.

Harlan H. Hugg, et al. v. Stewart L. Udall, Civil No. 9252, D. Colo. Order to Close Files and Stay Proceedings, March 25, 1967.

Barnette T. Napier, et al. v. Secretary of the Interior, Civil No. 8691, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd., 406 F. 2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd. & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., March 12, 1971; judgment for plaintiff, 370 F. Supp. 108 (1973); vacated & remanded, September 22, 1975; petition for rehearing en banc denied; cert. denied, June 21, 1976; remanded to the Dept. for further proceedings, January 17, 1977.

John W. Savage v. Stewart L. Udall, Civil No. 9458, D. Colo. Order to Close Files and Stay Proceedings, March 25, 1967.

The Oil Shale Corp., et al. v. Secretary of the Interior, Civil No. 8680, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd., 406 F. 2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd. & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., March 12, 1971; judgment for plaintiff, 370 F. Supp. 108 (1973); vacated & remanded, September 22, 1975; petition for rehearing en banc denied; cert. denied, June 21, 1976; remanded to the Dept. for further proceedings, January 17, 1977.

The Oil Shale Corp., et al. v. Stewart L. Udall, Civil No. 9465, D. Colo. Order to Close Files & Stay Proceedings, March 25, 1967.

Joseph B. Umpleby, et al. v. Stewart L. Udall, Civil No. 8685, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd., 406 F. 2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd. & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., March 12, 1971; judgment for plaintiff, 370 F. Supp. 108 (1973); vacated & remanded, September 22, 1975; petition for rehearing en banc denied; cert. denied, June 21, 1976; remanded to the Dept. for further proceedings, January 17, 1977.

Union Oil Co. of California, a Corp. v. Stewart L. Udall, Civil No. 9461, D. Colo. Order to Close Files & Stay Proceedings, March 25, 1967.

Union Oil Co. of California, 71 I.D. 287 (1964)

Union Oil Co. of California v. Stewart L. Udall, Civil No. 2595-64. Judgment for defendant, December 27, 1965; no appeal.

Union Pacific R.R., 72 I.D. 76 (1965)

The State of Wyoming & Gulf Oil Corp. v. Stewart L. Udall, etc., Civil No. 4913, D. Wyo. Dismissed with prejudice, 255 F. Supp. 481 (1966); aff'd., 379 F. 2d 635 (10th Cir. 1967); cert. denied, 389 U.S. 985 (1967).

United Mine Workers of America v. Inland Steel Co., 83 I.D. 87 (1976)

United Mine Workers of America v. Thomas S. Kleppe, No. 76-1377, United States Ct. of Appeals, 7th Cir. Board's decision aff'd., 561 F. 2d 1258 (7th Cir. 1977).

United Mine Workers of America, Local Union No. 1993 v. Consolidation Coal Co., 84 I.D. 254 (1977)

Local Union No. 1993, United Mine Workers of America v. Cecil D. Andrus, No. 77-1582, United States Ct. of Appeals, D. C. Cir. Suit pending.

U.S. v. Alonzo A. Adams, et al., 64 I.D. 221 (1957), A-27364 (July 1, 1957)

Alonzo A. Adams, et al. v. Paul B. Witmer, et al., Civil No. 1222-57-Y, S.D. Cal. Complaint dismissed, November 27, 1957 (opinion); rev'd. & remanded, 271 F. 2d 29 (9th Cir. 1958); on rehearing, appeal dismissed as to Witmer; petition for rehearing by Berriman denied, 271 F. 2d 37 (9th Cir. 1959).

U.S. v. Alonzo Adams, Civil No. 187-60-WM, S.D. Cal. Judgment for plaintiff, January 29, 1962 (opinion); judgment modified, 318 F. 2d 861 (9th Cir. 1963); no petition.

U.S. v. Ken & Kenneth D. Alexander, 17 IBLA 421 (1974)

Ken & Kenneth D. Alexander v. The Secretary of the Interior, Civil No. 75-465, D. Ore. Suit pending.

U.S. v. A. F. Anderson, et al., 15 IBLA 123 (1974)

A. F. Anderson, Wilton Dale, William F. Mackey, Arthur Roberts, Kenneth Roberts, Hugh Scott, Ester Desmarais, Louis D. Desmarais, Ernest L. Meunier, et al. v. Rogers C. B. Morton, Secretary of the Interior & The Board of Land Appeals, Civil No. C74-151, D. Wyo. Judgment for defendant, November 7, 1975.

Consolidated with Walter H. Burkhardt, et al. v. Rogers C. B. Morton, et al., Civil No. C74-152, D. Wyo., for purposes of appeal by order of November 19, 1975; dismissed, November 28, 1975.

U.S. v. Arizona Exploration Co., et al., A-28876 (June 22, 1962)

Blaine J. Lord, et al. v. Roy T. Helmandollar, et al., Civil No. 987-63. Judgment for defendants, September 30, 1963; appeal dismissed, 348 F. 2d 780 (1965); cert. denied, 383 U.S. 928 (1966); rehearing denied, 384 U.S. 947 (1966).

U.S. v. Melton E. Baker, 23 IBLA 319 (1976)

Melton E. Baker v. U.S., Thomas Kleppe, Individually & as Secretary of the Interior & Stanley Gurnewald, Individually & as District Ranger of the Forest Service of the U.S. Dept. of Agriculture, Civil No. CIV 76-408 PCT WPC, D. Ariz. Complaint dismissed, April 25, 1977; appeal filed, June 21, 1977.

U.S. v. E. A. & Esther Barrows, 76 I.D. 299 (1969)

Esther Barrows, as an individual & as Executrix of the Last Will of E. A. Barrows, Deceased v. Walter J. Hickel, Civil No. 70-215-CC, C.D. Cal. Judgment for defendant, April 20, 1970; aff'd., 447 F. 2d 80 (9th Cir. 1971).

U.S. v. A. O. Bartell, 31 IBLA 47 (1977)

A. O. Bartell v. Cecil Andrus, Secretary of the Interior, Civil No. 77-667, D. Ore. Suit pending.

U.S. v. Charles Thomas Beaird, 31 IBLA 203 (1977)

Charles Thomas Beaird v. Cecil Andrus, Secretary of the Interior & U.S., Civil No. F-77-31, D. Alas. Suit pending.

U.S. v. J. L. Block, 80 I.D. 571 (1973)

J. L. Block v. Rogers Morton, Secretary of the Interior, Civil No. LV-74-9, BRT, D. Nev. Judgment for defendant, June 6, 1975; rev'd. & remanded with instructions to remand to the Secretary of Interior, March 29, 1977; no petition.

U.S. v. Blue Bell Gold Mining Co., et al., 17 IBLA 182 (1974)

Blue Bell Gold Mining Co. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. C74-698 S, W.D. Wash. Judgment for defendant, September 18, 1975; no appeal.

U.S. v. Catherine R. Blythe, 16 IBLA 94 (1975)

Catherine R. Blythe v. Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV 75-750 B, D. N.M. Dismissed, February 28, 1977; aff'd., November 16, 1977.

U.S. v. Lloyd W. Booth, 76 I.D. 73 (1969)

Lloyd W. Booth v. Walter J. Hickel, Civil No. 42-69, D. Alas. Judgment for defendant, June 30, 1970; no appeal.

U.S. v. R. B. Borders, A-28624 (October 23, 1961)

J. R. Osborne v. Harold C. Hammitt, Civil No. 414, D. Nev. Judgment for defendant, August 19, 1964 (opinion); no appeal.

U.S. v. Alice A. & Carrie H. Boyle, 76 I.D. 61, 318 (1969), Reconsideration denied, January 22, 1970.

Alice A. & Carrie H. Boyle v. Rogers C. B. Morton, Secretary of the Interior, Civil No. Civ-71-491 Phx WEC, D. Ariz. Judgment for plaintiff, May 4, 1972; rev'd. & remanded 519 F. 2d 551 (9th Cir. 1975); cert. denied, 423 U.S. 1033 (1975).

U.S. v. R. W. Brubaker, et al., A-30636 (July 24, 1968), 80 I.D. 261 (1973)

R. W. Brubaker, a/k/a Ronald W. Brubaker, B. A. Brubaker, a/k/a Barbara A. Brubaker, & William J. Mann, a/k/a W. J. Mann v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 73-1228 EC, C.D. Cal. Dismissed with prejudice, August 13, 1973; aff'd., 500 F. 2d 200 (9th Cir. 1974); no petition.

U.S. v. Joe W. Bryant, 25 IBLA 247 (1976)

Joe E. Bryant v. Secretary of the Interior, Civil No. A76-84, D. Alas. Suit pending.

U.S. v. Henrietta & Andrew Julius Bunkowski, 5 IBLA 102; 79 I.D. 43 (1972)

Henrietta & Andrew Julius Bunkowski v. L. Paul Appelgate, District Manager, Bureau of Land Management, Thomas S. Kleppe, Secretary of the Interior, et al., Civil No. R-76-182-BRT, D. Nev. Suit pending.

U.S. v. Calhoun & Howell of Oregon, Ltd., U.S. v. Lee Temple, A-31004 (August 29, 1969)

Calhoun & Howell of Oregon, Ltd. v. Walter J. Hickel, Civil No. 70-155, D. Ore. Judgment for defendant, September 24, 1970; no appeal.

U.S. v. John C. Chapman, et al., A-30581 (July 16, 1968)

John C. Chapman, et al. v. U.S., Civil No. 69-12 Pct., D. Ariz. Judgment for defendant, January 18, 1972; no appeal.

U.S. v. Charleston Stone Products, Inc., 9 IBLA 94 (1973)

Charlestone Stone Products Co. v. Rogers Morton, Secretary of the Interior, Civil No. LV-2039-BRT, D. Nev. Vacated & remanded to the Dept. for further proceedings, November 7, 1974 (opinion); aff'd. & remanded, 553 F. 2d 1209 (9th Cir. 1977); petition for cert. filed September 9, 1977.

U.S. v. Nick Chournos, A-28577 (July 14, 1961)

Nick Chournos v. U.S., Civil No. C-164-61, D. Utah. Complaint dismissed, January 9, 1962; no appeal.

Nick Chournos, et al. v. U.S., et al., Civil No. C-238-62, D. Utah. Dismissed, June 28, 1963; aff'd., 335 F. 2d 918 (10th Cir. 1964); no petition.

U.S. v. Willard Christensen, A-27549 (May 14, 1958)

La Fortuna Uranium Mines, Inc. v. Fred A. Seaton, Civil No. 191-59. Judgment for defendant, April 4, 1960; no appeal.

U.S. v. Clear Gravel Enterprises, Inc., 2 IBLA 285 (1971)

Clear Gravel Enterprises, Inc. v. Nolan Keil, State Dir., Bureau of Land Management, State of Nevada, & Rolla Chandler, Chief Div. of Technical Services, Bureau of Land Management, Reno, Nevada, Civil No. LV-1654, D. Nev. Judgment for defendant, May 4, 1972; aff'd., October 9, 1974; rehearing denied, January 13, 1975; cert. denied, April 21, 1975.

U.S. v. J. R. Clements, A-27751 (December 15, 1958)

John Raymond Clements v. Fred A. Seaton, Civil No. 560-59. Judgment for defendant, January 13, 1960; no appeal.

U.S. v. Elsie Cody, 1 IBLA 92 (1970)

Elsie Cody v. Walter J. Hickel, Civil No. 1-70-125, D. Idaho. Remanded to the Secretary of the Interior for taking of additional evidence, December 6, 1971; appeal withdrawn, March 10, 1972.

U.S. v. Alfred Coleman, A-28557 (March 27, 1962)

U.S. v. Alfred Coleman, Civil No. 63-956-WB, S.D. Cal. Judgment for defendant, February 25, 1965 (opinion); remanded, 363 F. 2d 190 (9th Cir. 1966); aff'd., 379 F. 2d 555 (9th Cir. 1967); cert. granted, 389 U.S. 970 (1967); rev'd. & remanded to 9th Cir., 390 U.S. 599 (1968); rehearing denied, 391 U.S. 961 (1968); aff'd., 405 F. 2d 72 (9th Cir. 1968); cert. denied, 394 U.S. 907 (1969).

U.S. v. Ford M. Converse, 72 I.D. 141 (1965)

Ford M. Converse v. Stewart Udall, Civil No. 65-581, D. Ore. Judgment for defendant, 262 F. Supp. 583 (1966); aff'd., 399 F. 2d 616 (9th Cir. 1968); cert. denied, 393 U.S. 1025 (1969).

U.S. v. Jesse W. Crawford, A-30820 (January 29, 1968)

Jesse W. Crawford v. Stewart L. Udall, Civil No. 6969 Phx., D. Ariz. Judgment for defendant, May 20, 1969; aff'd., 442 F. 2d 1030 (9th Cir. 1971); no petition.

U.S. v. Jerry L. Crow, 28 IBLA 345 (1977)

Jerry L. Crow v. Cecil Andrus, Secretary of the Interior & U.S., Civil No. F77-12-CIV, D. Alas. Suit pending.

U.S. v. Bradley F. Denham, 29 IBLA 185 (1977)

Bradley F. Denham v. Cecil Andrus, Secretary of the Interior, Civil No. CIV77-392 Phx WEC, D. Ariz. Suit pending.

U.S. v. Alvis F. Denison, et al., 71 I.D. 144 (1964), 76 I.D. 233 (1969)

Marie W. Denison, individually & as executrix of the Estate of Alvis F. Denison, Deceased v. Stewart L. Udall, Civil No. 963 D. Ariz. Remanded, 248 F. Supp. 942 (1965).

Leo E. Shoup v. Stewart L. Udall, Civil No. 5822-Phx., D. Ariz. Judgment for defendant, January 31, 1972.

Reid Smith v. Stewart L. Udall, etc., Civil No. 1053, D. Ariz. Judgment for defendant, January 31, 1972; aff'd., February 1, 1974; cert. denied, October 15, 1974.

U.S. v. J. S. Devenny, A-30289 (August 6, 1964)

J. S. Devenny v. Stewart L. Udall, Civil No. 6283, W.D. Wash. Dismissed, June 22, 1966; no appeal.

U.S. v. Nelson E. Devine & Raymond E. Bryant, A-30435 (April 28, 1965), 2 IBLA 258 (1971)

U.S. v. Raymond E. Bryant, Civil No. 9929, E.D. Cal. Remanded to Dept. for exercise of discretion, September 10, 1969; decision of BLM dated January 16, 1970 aff'd. by the Board of Land Appeals, May 10, 1971.

U.S. v. Aloys A. & Doris E. L. Dietemann, 26 IBLA 356 (1976)

Aloys A. & Doris E. Dietemann v. Thomas L. Kleppe, Secretary of the Interior, Curtis Berklund, Director of the Bureau of Land Management, et al., Civil No. 76-3532 RMT, C.D. Cal. Summary judgment for defendant, February 9, 1977; no appeal.

U.S. v. Francis Dlouhy, et al., A-27668 (September 24, 1958)

Francis N. Dlouhy v. Fred A. Seaton, Civil No. 405-59. Judgment for defendant, May 3, 1960; appeal dismissed, November 28, 1960.

U.S. v. The Dredge Corp., A-28022 (December 18, 1959)

The Dredge Corp. v. J. Russell Penny, Civil No. 396, D. Nev. Judgment for defendant, September 25, 1962; remanded, 338 F. 2d 456 (9th Cir. 1964); judgment for plaintiff, August 8, 1966; judgment for defendants, 398 F. 2d 791 (9th Cir. 1968); cert. denied, 393 U.S. 1066 (1969).

U.S. v. The Dredge Corp., 7 IBLA 136 (1972)

The Dredge Corp. v. Rogers B. Morton, et al., Civil No. LV-2029, D. Nev. Stipulated dismissal, February 12, 1974.

U.S. v. Maurice Duval, et al., 1 IBLA 103 (1970)

Maurice Duval, et al. v. Rogers C. B. Morton, Civil No. 71-684, D. Ore. Dismissed, 347 F. Supp. (1972); aff'd., December 19, 1973 (opinion).

U.S. v. Elkhorn Mining Co., 2 IBLA 383 (1971)

Elkhorn Mining Co. v. Rogers Morton, Civil No. 2111, D. Mont. Judgment for defendant, January 19, 1973; no appeal.

U.S. v. Ralph Fairchild, A-30803 (January 19, 1968)

Minerals Trust Corp. v. Stewart L. Udall, Civil No. 6960 Phx., D. Ariz. Judgment for defendant, May 20, 1969; aff'd., 442 F. 2d 1030 (9th Cir. 1971).

U.S. v. Kathryn R. Fitzgerald, A-30973 (July 25, 1969)

Kathryn R. Fitzgerald & John Holden v. Walter J. Hickel, Civil No. 70-421-Phx., D. Ariz. Judgment for defendant, November 23, 1970.

U.S. v. Harlan H. Foresyth, 15 IBLA 43 (1974), Petition for review granted by order of October 30, 1975.

Earl J. Brubaker, Frank Jobe, Jr. & Rexford L. Mitchell v. Cecil Andrus, Secretary of the Interior, et al., Civil No. 77-W-280, D. Colo. Suit pending.

U.S. v. Everett Foster, et al., 65 I.D. 1 (1958)

Everett Foster, et al. v. Fred A. Seaton, Civil No. 344-58. Judgment for defendants, December 5, 1958 (opinion); aff'd., 271 F. 2d 836 (1959); no petition.

U.S. v. Jack L. Gardener, 18 IBLA 175 (1974)

Jack L. Gardener v. Secretary of the Interior, Civil No. 75-1413-R, C.D. Cal. Judgment for defendant, June 16, 1975; notice of appeal filed, August 8, 1975.

U.S. v. Fred Garula, A-29948 (June 3, 1964)

Fred Garula v. Stewart L. Udall, Civil No. 8998, D. Colo. Judgment for plaintiff, 268 F. Supp. 910 (1967); rev'd., 405 F. 2d 1181 (10th Cir. 1968); no petition.

U.S. v. Golden Eagle Mining Corp., A-30864 (September 25, 1967)

Golden Eagle Mining Corp. v. Stewart L. Udall, Secretary of the Interior, Civil No. S-937, E.D. Cal. Dismissed for lack of prosecution, October 6, 1969; no appeal.

U.S. v. Golden Grigg, et al., 82 I.D. 123 (1975)

Golden T. Grigg, LeFawn Grigg, Fred Baines, Otis H. Williams, Kathryn Williams, Lovell Taylor, William A. Anderson, Saragene Smith, Thomas M. Anderson, Bonnie Anderson, Charles L. Taylor, Darlene Baines, Luann & Paul E. Hogg v. U.S., Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-75-75, D. Idaho. Suit pending.

U.S. v. Gunsight Mining Co., 5 IBLA 62 (1972)

Gunsight Mining Corp. v. Rogers C. B. Morton, Civil No. 72-92 Tuc, D. Ariz. Dismissed, September 11, 1973; no appeal.

U.S. v. C. V. Hallenbeck, et al., 21 IBLA 296 (1975)

Charles V. Hallenbeck, Jr. & Clyde A. Hallenbeck, as Individuals, as Trustees, & as Members of a Class v. Bureau of Reclamation, Civil No. 75-M-786, D. Colo. Suit pending.

U.S. v. Urban Harenberg, et al., 11 IBLA 153 (1973)

Century Industries-Flagstaff, an Arizona Corp. (successor-in-interest to Urban, LaVaun, Sylvan L. & Beth Harenberg, & to Flagstaff Service & Materials Co., an Arizona Corp., bankrupt) v. U.S., Rogers Morton, Secretary of the Interior, et al., Civil No. 75-157 PCT WPC, D. Ariz. Suit pending.

U.S. v. Richard P. Haskins, A-30737 (December 19, 1966), 3 IBLA 77 (1971)

Richard P. Haskins for Himself & as Admin. of the Estate of Bartholomew H. Haskins, Deceased v. Udall, Civil No. 67-1815-CC, C.D. Cal. Judgment for defendant, April 15, 1968; remanded to the Director, Bureau of Land Management for an exercise of discretion, October 3, 1969.

U.S. v. Richard P. Haskins, Civil No. 72-246 JWC, C.D. Cal. Judgment for plaintiff, May 18, 1972 (opinion); rehearing denied, June 28, 1972; aff'd. & remanded for further proceedings, October 25, 1974; no petition.

U.S. v. Gerald D. Heden, et al., 19 IBLA 326 (1975)

Gerald D. & Sharon A. Heden, John D. & Diane E. Prichard v. The Secretary of the Interior, Civil No. 75-543, D. Ore. Dismissed, August 4, 1977; appeal filed September 29, 1977.

U.S. v. Henault Mining Co., 73 I.D. 184 (1966)

Henault Mining Co. v. Harold Tysk, et al., Civil No. 634, D. Mont. Judgment for plaintiff, 271 F. Supp. 474 (1967); rev'd. & remanded for further proceedings, 419 F. 2d 766 (9th Cir. 1969); cert. denied, 398 U.S. 950 (1970); judgment for defendant, October 6, 1970.

U.S. v. Charles H. Henrikson, et al., 70 I.D. 212 (1963)

Charles H. Henrikson, et al. v. Stewart L. Udall, et al., Civil No. 41749, N.D. Cal. Judgment for defendant, 229 F. Supp. 510 (1964); aff'd., 350 F. 2d 949 (9th Cir. 1965); cert. denied, 384 U.S. 940 (1966).

U.S. v. Taylor T. Hicks, et al., A-30780 (October 24, 1967)

Taylor T. Hicks, et al. v. U.S., Stewart L. Udall, Secretary of the Interior, Civil No. Civ.-1202 Pct., D. Ariz. Judgment for defendant, March 26, 1970.

U.S. v. Ernest Higbee, et al., A-31063 (April 1, 1970)

Ernest Higbee, et al. v. Rogers C. B. Morton, et al., Civil No. 1674, D. Nev. Judgment for defendant, May 5, 1972; vacated & remanded, July 22, 1974; amended, September 13, 1974; vacated & remanded to the Secretary for taking of further evidence for reconsideration of the issues, December 19, 1974.

U.S. v. Humboldt Placer Mining Co. & Del De Rosier, 79 I.D. 709 (1972)

Humboldt Placer Mining Co. & Del De Rosier v. Secretary of the Interior, Civil No. S-2755, E.D. Cal. Dismissed with prejudice, June 12, 1974; aff'd., 549 F. 2d 622 (9th Cir. 1977); petition for cert. filed June 25, 1977.

U.S. v. Ideal Cement Co., 5 IBLA 235 (1972)

Ideal Basic Industries, Inc., formerly known as Ideal Cement Co. v. Rogers C. B. Morton, Civil No. J-12-72, D. Alas. Judgment for defendant, February 25, 1974; motion to vacate judgment denied, May 6, 1974; aff'd., 542 F. 2d 1364 (9th Cir. 1976).

U.S. v. Independent Quick Silver Co., 72 I.D. 367 (1965)

Independent Quick Silver Co., an Oregon Corp. v. Stewart L. Udall, Civil No. 65-590, D. Ore. Judgment for defendant, 262 F. Supp. 583 (1966); appeal dismissed.

U.S. v. Menzel G. Johnson, 16 IBLA 234 (1974) See M. G. Johnson

U.S. v. R. B. Johnson, A-30405 (October 28, 1965)

R. B. Johnson v. Stewart L. Udall, Civil No. 1071, D. Ariz. Judgment for defendant, November 21, 1967; no appeal.

U.S. v. Robert N. Johnson, et al., A-30828 (January 29, 1968)

Robert N. Johnson, et al. & Thelma A. Johnson as individ. & as Executrix of Nolan F. Fultz estate v. Stewart L. Udall, Civil No. 68-994-AAH, C.D. Cal. Judgment for plaintiff, 292 F. Supp. 738 (1968); no appeal.

U.S. v. David L. & Kathryn King, A-30217 (December 29, 1964)

David L. & Kathryn King v. Bureau of Land Management, Civil No. S2765, E.D. Cal. Dismissed, October 30, 1973; no appeal.

U.S. v. William C. King, 15 IBLA 210 (1974)

William C. King v. U.S., & The Secretary of the Interior, et al., Civil No. 74-151-TUC-JAW, D. Ariz. Judgment for defendant, July 10, 1975; dismissed, January 7, 1977.

U.S. v. Horace J. & Elsie Marie Knowlton, A-30912 (May 21, 1968)

Elsie Marie & Horace J. Knowlton v. Walter J. Hickel, Secretary of the Interior, Civil No. C-191-69, D. Utah. Judgment for defendant, November 13, 1970.

U.S. v. Charles W. & Cora A. Kohl, 5 IBLA 298 (1972)

Charles W. & Cora A. Kohl v. Steve Yurich & Rogers C. B. Morton, et al., Civil No. 2155, D. Mont. Dismissed with prejudice, January 17, 1973; no appeal.

U.S. v. Richard Dean Lance, 73 I.D. 218 (1966)

Richard Dean Lance v. Stewart L. Udall, et al., Civil No. 1864, D. Nev. Judgment for defendant, January 23, 1968; no appeal.

U.S. v. Lane Minerals, Inc., A-30497 (March 28, 1966)

Lane Minerals, Inc. v. Stewart L. Udall & the Confederated Salish & Kootenai Tribes of the Flathead Indian Reservation, Civil No. 67-535, D. Ore. Judgment for defendant, February 2, 1970.

U.S. v. Ethel Schell Larsen & Minerals Trust Corp., 9 IBLA 247 (1973)

Ethel Schell Larsen & Minerals Trust Corp. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 73-119-TUC-JAW, D. Ariz. Judgment for defendant, September 24, 1974; no appeal.

U.S. v. William A. McCall, Sr., The Dredge Corp., Estate of Olaf H. Nelson, Deceased, Small Tract Applicants Assoc., Intervenor, 78 I.D. 71 (1971)

William A. McCall, Sr., The Dredge Corp. & Olaf H. Nelson v. John F. Boyles, et al., Civil No. 74-68(RDF), D. Nev. Judgment for defendant, June 8, 1976.

U.S. v. William A. McCall, Sr., Estate of Olaf Henry Nelson, Deceased, 7 IBLA 21; 79 I.D. 457 (1972)

William A. McCall, Sr. & the Estate of Olaf Henry Nelson, Deceased v. John S. Boyles, District Manager, Bureau of Land Management, Thomas S. Kleppe, Secretary of Interior, et al., Civil No. LV-76-155 RDF, D. Nev. Judgment for defendant, November 4, 1977; appeal filed.

U.S. v. William A. McCall & R. J. Kaltenborn, 1 IBLA 115 (1970)

William A. McCall v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-70 RDF, D. Nev. Judgment for defendant, October 1, 1975.

U.S. v. Kenneth McClarty, 71 I.D. 331 (1964), 76 I.D. 193 (1969)

Kenneth McClarty v. Stewart L. Udall, et al., Civil No. 2116, E.D. Wash. Judgment for defendant, May 26, 1966; rev'd. & remanded, 408 F. 2d 907 (9th Cir. 1969); remanded to the Secretary, May 7, 1969; vacated & remanded to Bureau of Land Management, August 13, 1969.

U.S. v. Charles Maher, et al., 5 IBLA 209, 79 I.D. 109 (1972)

Charles Maher & L. Franklin Mader v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-72-153, D. Idaho. Dismissed without prejudice, April 3, 1973.

U.S. v. Mary A. Mattey, 67 I.D. 63 (1960)

U.S. v. Edison R. Nogueira, et al., Civil No. 65-220-PH, C.D. Cal. Judgment for defendant, November 16, 1966; rev'd. & remanded, 403 F. 2d 816 (1968); no petition.

U.S. v. Alvin M. May, A-30675 (July 25, 1968)

Alvin M. May v. Stewart Udall, et al., Civil No. R-2107, D. Nev. Judgment for plaintiff, December 15, 1969.

U.S. v. Frank & Wanita Melluzzo, 76 I.D. 160 (1969)

Frank & Wanita Melluzzo v. Rogers C. B. Morton, Civil No. CIV 73-308 PHX CAM, D. Ariz. Judgment for defendant, June 19, 1974; aff'd. in part & rev'd. & remanded in part, 534 F. 2d 860 (9th Cir. 1976); no petition.

U.S. v. Frank & Wanita Melluzzo, et al., 76 I.D. 181 (1969), Reconsideration, 1 IBLA 37, 77 I.D. 172 (1970)

WJM Mining & Development Co., et al. v. Rogers C. B. Morton, Civil No. 70-679, D. Ariz. Judgment for defendant, December 8, 1971; dismissed, February 4, 1974.

U.S. v. Mineral Ventures, Ltd., 80 I.D. 792 (1973)

Mineral Ventures, Ltd. v. The Secretary of the Interior, Civil No. 74-201, D. Ore. Judgment for defendant, July 10, 1975; vacated & remanded, May 3, 1977; modified amended judgment, September 9, 1977.

U.S. v. G. Patrick Morris, et al., 82 I.D. 146 (1975)

G. Patrick Morris, Joan E. Roth, Elise L. Neeley, Lyle D. Roth, Vera M. Baltzor (formerly Vera M. Noble), Charlene S. & George R. Baltzor, Juanita M. & Nellie Mae Morris, Milo & Peggy M. Axelsen, & Farm Development Corp. v. U.S. & Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-75-74, D. Idaho. Aff'd. in part, rev'd. in part, December 20, 1976; appeal filed February 18, 1977.

U.S. v. Ernest Evon Moseley, A-30971 (December 13, 1967)

Ernest E. Moseley v. Udall, Civil No. 6939 Phx., D. Ariz. Judgment for defendant, May 20, 1969; aff'd., 442 F. 2d 1030 (9th Cir. 1971); no petition.

U.S. v. G. C. (Tom) Mulkern, A-27746 (January 19, 1959)

G. C. (Tom) Mulkern v. James Keough, Civil No. 299, D. Nev. Judgment for defendant, February 19, 1963 (opinion); aff'd., 326 F. 2d 896 (9th Cir. 1964); no petition.

U.S. v. Christian F. Murer, 4 IBLA 242 (1972)

Christian F. Murer v. Rogers C. B. Morton, Secretary of the Interior, Civil No. C-3941, D. Colo. Judgment for defendant, March 22, 1973 (oral opinion); no appeal.

U.S. v. National Motor Service Co., 15 IBLA 23 (1974)

National Motor Service Co., Successor to Gary K. Lloyd v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-74-41, D. Idaho. Complaint dismissed with prejudice, February 24, 1976.

U.S. v. Leonard F. Nelson, IBLA 71-57 (December 6, 1972)

Leonard F. Nelson v. Rogers C. B. Morton, et al., Civil No. A-3-73, D. Alas. Dismissed with prejudice, 368 F. Supp. 692 (1974); rev'd. & remanded, January 14, 1976; no petition.

U.S. v. Melvin L. Nevitt, A-30030 (July 28, 1964)

U.S. v. Melvin L. Nevitt, Civil No. 3423-SD-C, S.D. Cal. Judgment for plaintiff, November 28, 1966; no appeal.

U.S. v. New Jersey Zinc Co., 74 I.D. 191 (1967)

The New Jersey Zinc Corp., a Del. Corp. v. Stewart L. Udall, Civil No. 67-C-404, D. Colo. Dismissed with prejudice, January 5, 1970.

U.S. v. W. G. & Eva Rose Nickol, 9 IBLA 117 (1973)

W. G. & Eva Rose Nickol v. U.S. & Rogers C. B. Morton, Secretary of the Interior, Civil No. 9995, D. N.M. Dismissed, October 5, 1973; rev'd. & remanded, June 18, 1974; rehearing denied, September 30, 1974; remanded to the Dept. for further proceedings, January 30, 1975; no appeal.

U.S. v. Lloyd O'Callaghan, Sr., et al., 79 I.D. 689 (1972), U.S. v. Lloyd O'Callaghan, Sr., Contest No. R-04845 (July 7, 1975)

Lloyd O'Callaghan, Sr., Individually & as Executor of the Estate of Ross O'Callaghan v. Rogers Morton, et al., Civil No. 73-129-S, S.D. Cal. Aff'd. in part & remanded, May 14, 1974.

U.S. v. Wilma L. Oldaker, A-30378 (August 26, 1965)

Wilma Oldaker v. Stewart L. Udall, Civil No. A-98-65, D. Alas. Stipulated dismissal with prejudice, March 3, 1967; no appeal.

U.S. v. J. R. Osborne, et al., 77 I.D. 83 (1970)

J. R. Osborne, Individually & on behalf of R. R. Borders, et al. v. Rogers C. B. Morton, et al., Civil No. 1564, D. Nev. Judgment for defendant, March 1, 1972; remanded to Dist. Ct. with directions to reassess Secretary's conclusion, February 22, 1974; remanded to the Dept. with orders to re-examine the issues, December 3, 1974.

U.S. v. Pittsburgh Pacific Co., 30 IBLA 388; 84 I.D. 282 (1977)

Pittsburgh Pacific Co. v. U.S., Dept. of the Interior, Cecil Andrus, Joseph W. Goss, Anne Poindexter Lewis, Martin Ritvo, State of South Dakota, Dept. of Environmental Protection & Allen Lockner, Civil No. CIV77-5055, W.D. S.D. Suit pending.

State of South Dakota v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. CIV 77-5058, W.D. S.D. Suit pending.

U.S. v. Paul C. Poncia, et al., 11 IBLA 302 (1973)

Paul C., Opal L., John C., & Dorothy Poncia v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-73-93, D. Idaho. Remanded to the Secretary of the Interior for consideration, September 28, 1976.

U.S. v. Richard C. Porter, et al., A-29882 (April 24, 1964)

Hal W. Eldridge, et al. v. Secretary of the Interior, Civil No. 64-353, D. Ore. Judgment for defendant, December 15, 1965 (opinion); no appeal.

U.S. v. E. V. Pressentin, et al., A-27495 (April 2, 1958)

E. V. Pressentin v. Fred A. Seaton, Civil No. 4804, W.D. Wash. Voluntary dismissal by plaintiff entered July 24, 1959.

E. V. Pressentin, et al. v. Fred A. Seaton, Civil No. 1907-59. Judgment for defendant, January 15, 1960; rev'd. & remanded, 284 F. 2d 195 (1960); see A-30004, 71 I.D. 447 (1964).

U.S. v. E. V. Pressentin & Devisees of the H. S. Martin Estate, 71 I.D. 447 (1964)

E. V. Pressentin, Fred J. Martin, Admin. of H. A. Martin Estate v. Stewart L. Udall & Charles Stoddard, Civil No. 1194-65. Judgment for defendant, March 19, 1969; no appeal.

U.S. v. C. F. Pruess, Sr., A-28641 (August 22, 1961)

C. F. Pruess, Sr. v. Stewart L. Udall, Civil No. 1331-62. Judgment for defendant, May 12, 1964; remanded, 359 F. 2d 615 (1965); judgment for defendant, January 4, 1966; per curiam dec., remanded for transfer to Dist. Ct. for Oregon. Not reported.

C. F. Pruess, Sr. v. Stewart L. Udall, Civil No. 67-167, D. Ore. Judgment for defendant, 286 F. Supp. 138 (1968); aff'd., 410 F. 2d 750 (9th Cir. 1969); cert. denied, 396 U.S. 967 (1969); rehearing denied, 397 U.S. 1003 (1970).

U.S. v. William D. Pulliam, et al., 1 IBLA 143 (1970)

William D. Pulliam, et al. v. Secretary of the Interior, Civil No. 71-649, D. Ariz. Dismissed on the merits, March 29, 1973; no appeal.

U.S. v. Chester L. Ramsey, 29 IBLA 243 (1977)

Chester Lee Ramsey v. Cecil Andrus, Secretary of the Interior, et al., Civil No. CIV S-77-348-TJM, D. Cal. Suit pending.

U.S. v. Marvin C. Ramsey, et al., 14 IBLA 152 (1974)

Marvin C. & Vesta Ruth Ramsey v. The Secretary of the Interior, Civil No. 74-192, D. Ore. Dismissed, May 1, 1975; aff'd., March 22, 1977.

U.S. v. Ramsher Mining & Engineering Co., 13 IBLA 268 (1973)

Ramsher Mining & Engineering Co. v. Secretary of the Interior, Bureau of Land Management, Civil No. CV-74-3062-WMB, C.D. Cal. Dismissed with prejudice, February 11, 1975; aff'd., October 15, 1976.

U.S. v. Cecil R. Reed, A-30354 (September 29, 1965)

Cecil R. Reed v. Stewart L. Udall, et al., Civil No. 1784, D. Nev. Judgment for defendant, December 19, 1967; aff'd., 416 F. 2d 377 (9th Cir. 1969); cert. denied, 397 U.S. 924 (1970); rehearing denied, 397 U.S. 1031 (1970).

U.S. v. George A. & Dorothy Relyea, A-30909 (June 25, 1968)

George A. & Dorothy Relyea v. Stewart Udall, Secretary of the Interior, Civil No. 3-68-20, D. Idaho. Judgment for defendant, February 19, 1970; no appeal.

U.S. v. Amos D. & Lena S. Robinette, A-31036, A-31133 (March 4, 1970)

Amos D. Robinette v. Rogers C. B. Morton, et al., Civil No. 71-1156-HP, C.D. Cal. Complaint dismissed with prejudice, October 22, 1971; appeal dismissed, April 18, 1972.

U.S. v. Robert A. Rukke, Registered Agent, Valumines, Inc., et al., 32 IBLA 155 (1977)

Robert A. Rukke, Secretary, Valumines, Inc., Milo Moore, William Soren, George Dunlap (aka George Dunlop) & Estate of Eugene Francis Dunlap (aka Gene Dunlop) v. U.S., Civil No. C77-206T, D. Wash. Suit pending.

U.S. v. Robert B. Sainberg, 5 IBLA 270 (1972)

Robert B. Sainberg, Rose Mary Druse, Frank Patrick Vallely, Jr., & William J. Vallely v. Rogers C. B. Morton, Civil No. 72-217-PCT, D. Ariz. Dismissed, 363 F. Supp. 1259 (1973); no appeal.

U.S. v. Edwin R. Saurers, et al., A-30097 (July 9, 1964)

Edwin R. Saurers, et al. v. Stewart L. Udall, Civil No. 6245, W.D. Wash. Judgment for defendant, July 19, 1965; no appeal.

U.S. v. Charles L. Seeley, et al., A-28127 (January 28, 1960)

Charles L. Seeley, et al. v. Secretary of the Interior, Civil No. 3693-60 & No. 41094, N.D. Cal. Judgment for defendant, July 29, 1964; appeal dismissed, December 16, 1964.

U.S. v. Ollie Mae Shearman, et al., 73 I.D. 386 (1966)
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U.S. v. Silverton Mining & Milling Co., IBLA-70-22 (September 23, 1970)

Multiple Use Inc. v. Rogers C. B. Morton, Civil No. 71-211, D. Ariz. Judgment for defendant, 353 F. Supp. 184 (1972); aff'd., 504 F. 2d 448 (9th Cir. 1974); no petition.

U.S. v. Thomas R. Shuck, A-27965 (February 2, 1960)

Thomas R. Shuck v. Roy T. Helmandollar, Civil No. 682 Pct., D. Ariz. Judgment for defendant, December 7, 1961; no appeal.

U.S. v. U.S. Silica Corp., et al., A-30400 (August 24, 1965)

Simplot Industries, Inc. v. Udall, Civil No. 1024-S, D. Nev. Judgment for defendant, September 26, 1969; no appeal.

U.S. v. C. F. Snyder, et al., 72 I.D. 223 (1965)

Ruth Snyder, Adm'r(x) of the Estate of C. F. Snyder, Deceased, et al. v. Stewart L. Udall, Civil No. 66-C-131, D. Colo. Judgment for plaintiff, 267 F. Supp. 110 (1967); rev'd., 405 F. 2d 1179 (10th Cir. 1968); cert. denied, 396 U.S. 819 (1969).

U.S. v. Southern Pacific Co., 77 I.D. 41 (1970)

Southern Pacific Co., et al. v. Rogers C. B. Morton, et al., Civil No. S-2155, E.D. Cal. Judgment for defendant, November 20, 1974.

U.S. v. Clarence T. & Mary D. Stevens, 77 I.D. 97 (1970)

Clarence T. & Mary D. Stevens v. Walter J. Hickel, Civil No. 1-70-94, D. Idaho. Judgment for defendant, June 4, 1971.

U.S. v. Charles E. Stewart, A-28966 (September 25, 1962)

Charles E. Stewart v. Gordon Penny, et al., Civil No. 1619, D. Nev. Judgment for plaintiff, 238 F. Supp. 821 (1965); no appeal.

U.S. v. Cornelius D. Sullivan (a/k/a Corney Sullivan) & Josie L. Sullivan, 5 IBLA 275 (1972)

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U.S. v. Alfred N. Verrue, 75 I.D. 300 (1968)

Alfred N. Verrue v. U.S., et al., Civil No. 6898 Phx., D. Ariz. Rev'd. & remanded, December 29, 1970; aff'd., 457 F. 2d 1202 (9th Cir. 1971); no petition.

U.S. v. Kenneth O. Watkins & Harold E. L. Barton, A-29862 (April 24, 1966), A-30659 (October 19, 1967)

Harold E. L. Barton v. Stewart L. Udall, Secretary of the Interior & U.S., Civil No. 69-26, D. Ore. Judgment for defendant, March 17, 1971; aff'd., 498 F. 2d 288 (9th Cir. 1974); cert. denied, November 18, 1974.

U.S. v. Oscar W. Weiss, et al., A-30809 (September 14, 1967), 15 IBLA 198 (1974)

Oscar W. Weiss v. Stewart L. Udall, Civil No. C-882, D. Colo. Remanded, January 2, 1969.

U.S. v. Thomas C. Wells, A-30805 (January 8, 1968), A-30805 (Supp.) (April 25, 1969), A-30805 (Supp. II) (November 17, 1969)

Thomas C. Wells v. Udall, Civil No. S-693, E.D. Cal. Remanded to Secretary, December 12, 1968; remanded to Bureau of Land Mgmt. Time extended to November 1, 1970 to comply with requirements of Supp. II. Judgment for defendant, December 17, 1970.

U.S. v. Vernon O. & Ina C. White, 72 I.D. 552 (1965)

Vernon O. & Ina C. White v. Stewart L. Udall, Civil No. 1-65-122, D. Idaho. Judgment for defendant, January 6, 1967; aff'd., 404 F. 2d 334 (9th Cir. 1968); no petition.

U.S. v. Frank W. Winegar, et al., 81 I.D. 370 (1974)

Shell Oil Co. & D. A. Shale, Inc. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 74-F-739, D. Colo. Judgment for plaintiff, January 17, 1977.

U.S. v. Rodney Wood, et al., A-30697 (May 31, 1967)

Rodney Wood, et al. v. Stewart L. Udall, Secretary of the Interior & Orville L. Freeman, Secretary of Agriculture, Civil No. S-436, N.D. Cal. Dismissed without prejudice, November 7, 1967; amended complaint filed; judgment for defendant, March 27, 1969; no appeal.

U.S. v. Elodymae Zwang, U.S. v. Darrell Zwang, 26 IBLA 41; 83 I.D. 280 (1976)

Darrell & Elodymae Zwang v. Cecil Andrus, Secretary of the Interior, Civil No. 77-1431 R, D. Cal. Suit pending.

U.S. v. Merle I. Zweifel, et al., 16 IBLA 74 (1974)

Walter H. Burkhardt, et al. v. Rogers C. B. Morton, Secretary of the Interior & The Board of Land Appeals, Civil No. C74-152, D. Wyo. Judgment for defendant, November 7, 1975.

Consolidated with A. F. Anderson, et al. v. Rogers C. B. Morton, et al., Civil No. C74-151, D. Wyo. for purposes of appeal by order of November 19, 1975. Dismissed, November 28, 1975.

U.S. v. Merle I. Zweifel, et al., 80 I.D. 323 (1973)

Merle I. Zweifel, et al. v. U.S., Civil No. C-5276, D. Colo. Dismissed without prejudice, October 31, 1973.

Kenneth Roberts, et al. v. Rogers C. B. Morton & The Interior Board of Land Appeals, Civil No. C-5308 D. Colo. Dismissed with prejudice, 389 F. Supp. 87 (1975); aff'd., 549 F. 2d 158 (10th Cir. 1977).

United Technical Industries, Inc., A-29406 (April 24, 1963)

Jay Nielson v. J. E. Keough, et al., Civil No. C-158-63, D. Utah. Dismissed, July 13, 1964 (opinion); no appeal.

Paul Unruh v. Wesley Lawrence Edwards, A-30584 (September 21, 1966)

Paul E. Unruh v. Udall, et al., Civil No. 1894-N, D. Nev. Judgment for defendant, June 14, 1967; no appeal.

Utah Power & Light Co., 4 IBLA 62 (1971)

Utah Power & Light Co. v. Rogers C. B. Morton, et al., Civil No. C-5-72, D. Utah. Dismissed with prejudice, November 3, 1972; aff'd., September 20, 1974.

Utah Power & Light Co., 14 IBLA 372 (1974)

Utah Power & Light Co. v. Thomas S. Kleppe, in his official capacity as Secretary of the Interior, Civil No. C-76-136, D. Utah. Suit pending.

Henrietta Roberts Vaden, IBLA 74-1, dismissed by order, August 8, 1973, Petition for Reconsideration denied by order, May 29, 1975.

Henrietta Roberts Vaden, a/k/a Henrietta R. Vaden v. Thomas S. Kleppe, Secretary of the Interior, et al., Civil No. A75-223 CIV, D. Alas. Stipulated dismissal, March 31, 1976.

E. A. Vaughey, 63 I.D. 85 (1956)

E. A. Vaughey v. Fred A. Seaton, Civil No. 1744-56. Dismissed by stipulation, April 18, 1957; no appeal.

Estate of Cecelia Smith Vergote (Borger), Morris A. (K.) Charles & Caroline J. Charles (Brendale), 5 IBIA 96; 83 I.D. 209 (1976)

Confederated Tribes & Bands of the Yakima Indian Nation v. Thomas Kleppe, Secretary of the Interior & Phillip Brendale, Civil No. C-76-199, E.D. Wash. Suit pending.

Estate of Florence Bluesky Vessell (Unallotted Lac Courte Oreilles Chippewa of Wisconsin), 1 IBIA 312, 79 I.D. 615 (1972)

Constance Jean Hollen Eskra v. Rogers C. B. Morton, et al., Civil No. 72-C-428, D. Wis. Dismissed, 380 F. Supp. 205 (1974); rev'd., September 29, 1975; no petition.

Burt A. Wackerli, et al., 73 I.D. 280 (1966)

Burt & Lueva G. Wackerli, et al. v. Stewart L. Udall, et al., Civil No. 1-66-92, D. Idaho. Amended complaint filed March 17, 1971; judgment for plaintiff, February 28, 1975.

Estate of Amelia Keyes Abbott Viramontes Walker, IA-1339 (April 5, 1966)

Earlene Ida Abbott Simons v. Udall, et al., Civil No. 2640, D. Mont. Judgment for defendant, 276 F. Supp. 75 (1967); no appeal.

Jack A. Walker, A-30492 (April 28, 1966)

Jack A. Walker v. U.S. & Udall, Civil No. 1-66-80, D. Idaho. Judgment for plaintiff, July 3, 1967; rev'd., 409 F. 2d 477 (9th Cir. 1969); no petition.

Estate of Milward Wallace Ward, 82 I.D. 341 (1975)

Alfred Ward, Irene Ward Wise, & Elizabeth Collins v. Kent Frizzell, Acting Secretary of the Interior, et al., Civil No. C75-175, D. Wyo. Dismissed, January 1, 1976.

Wasatch Development Co., et al., A-28674 (May 16, 1963)

Joseph B. Umpleby, et al. v. Stewart L. Udall, Civil No. 8156, D. Colo. Judgment for defendant, 285 F. Supp. 25 (1968); no appeal.

Weardco Construction Corp., 64 I.D. 376 (1957)

Weardco Construction Corp. v. U.S., Civil No. 278-59-PH, S.D. Cal. Judgment for plaintiff, October 26, 1959; satisfaction of judgment entered February 9, 1960.

Estate of Mary Ursula Rock Wellknown, 1 IBIA 83; 78 I.D. 179 (1971)

William T. Shaw, Jr., et al. v. Rogers C. B. Morton, et al., Civil No. 974, D. Mont. Dismissed, July 6, 1973 (opinion); no appeal.

Estate of Wahwersee R. Werqueyah, 5 IBIA 169 (1976)

Mattie Wahwersee v. Thomas Kleppe, Secretary of Interior, Civil No. CIV-76-0845-E, W.D. Okla. Suit pending.

Lucille S. West, Duncan Miller, et al., A-29242 et al. (February 25, 1963), Duncan Miller, A-29231 (February 5, 1963)

Cecil H. Phillips, et al. v. Stewart L. Udall, Civil No. 847-63. Dismissed on behalf of all except Lucille S. West; judgment for defendant, February 25, 1964; no appeal.

Estate of John P. Whitetail, IA-T-23 (April 17, 1970)

Doris Ann Whitetail Parker, et al. v. John Pappan, et al., Civil No. 70-C-373, D. Okla. Dismissed, July 10, 1973; motion for new trial & reconsideration overruled, August 17, 1973; no appeal.

Buck Willcoxson, A-27402, A-27403 (December 17, 1956)

Buck Willcoxson v. Douglas Henriques, Civil No. 3596, D. N.M. Motion of plaintiff to dismiss case without prejudice granted, December 10, 1957.

Buck Willcoxson v. Stewart L. Udall, Civil No. 2029-58.

U.S. v. Buck Willcoxson, et al., Civil No. 1492-59.

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Actions consolidated. Judgment for defendant, plaintiff & defendant, respectively, August 3, 1961; aff'd., 313 F. 2d 884 (1963); cert. denied, 373 U.S. 932 (1963).

William F. Klingensmith, Inc., IBCA-717-5-68, IBCA-734-10-68 (May 4, 1971)

William F. Klingensmith, Inc. v. U.S., Civil No. 1287-71.

William F. Klingensmith, Inc. v. U.S., Civil No. 1288-71.

Actions consolidated and transferred to Ct. of Claims January 24, 1972; Ct. Cl. No. 28-72. Dismissed, November 23, 1973.

David L. Williams, A-29858 (February 12, 1963)

Richard L. & Jean S. Hatter, Gary Linn Dusenberry, Jere D. Anderson, & Henry P. Carley d/b/a Chad Enterprise, a Joint Venture v. U.S., Civil No. S74-205, E.D. Cal. Judgment for defendant, August 8, 1975.

William A. Smith Contracting Co., IBCA-83 (July 16, 1959)

William A. Smith Contracting Co., et al. v. U.S., Ct. Cl. No. 264-57. Judgment for plaintiff, 292 F. 2d 847 (1961); no appeal.

William A. Smith Contracting Co. v. U.S., Ct. Cl. No. 279-59. Judgment for defendant, 292 F. 2d 854 (1961); no appeal.

Estate of Louise Wilson, IA-1380 (March 1, 1966)

Charles W. Heffelman v. Stewart L. Udall, Civil No. 6402, N.D. Okla. Dismissed, June 16, 1966; aff'd., 378 F. 2d 109 (10th Cir. 1967); cert. denied, 389 U.S. 926 (1967).

Frank Winegar, Shell Oil Co. & D. A. Shale Inc., 74 I.D. 161 (1967)

Shell Oil Co., et al. v. Udall, et al., Civil No. 67-C-321, D. Colo. Judgment for plaintiff, September 18, 1967; no appeal.

Joseph A. Winkler, 24 IBLA 380 (1976)

Joseph A. Winkler v. Thomas Kleppe, Secretary of the Interior, Civil No. C76-176, D. Utah. Judgment for defendant, June 20, 1977; appeal filed July 5, 1977.

Appeal of Wisenak, Inc., 1 ANCAB 157; 83 I.D. 496 (1976)

Wisenak, Inc., an Alaska Corp. v. Thomas S. Kleppe, Individually & as Secretary of the Interior & the U.S., Civil No. F76-38 Civ., D. Alas. Suit pending.

W. L. Ridge Construction Co., IBCA-80 (November 30, 1960)

W. L. Ridge v. U.S., Ct. Cl. No. 301-60. Suit dismissed, October 1, 1963.

Administrative Appeal of Robert B. Wooding, et al. v. Commissioner, Bureau of Indian Affairs, 4 IBIA 255 (1975), Reconsideration denied, 5 IBIA 9 (1976)

Robert B. Wooding, d/b/a Associated Investors, & Auburn Enterprises, Inc. v. Thomas Kleppe, Secretary of the Interior, et al., Civil No. C76-86T, W.D. Wash. Dismissed for failure to prosecute, June 3, 1977.

Woods Petroleum Corp., et al., William Ralph Stroble et al., 12 IBLA 247 (1973)

Duvels, Inc., West Park International, Inc., George H. Frandsen, Paul P. Dyreng, R. Morgan Dyreng, Stephen B. Nadauld, John B. Peacock & Lori M. Free v. Kent Frizzell, Acting Secretary of the Interior, Civil No. C-75-175, D. Utah. Judgment for defendant, July 6, 1976; appeal filed February 3, 1977.

Mountain States Resources v. Rogers C. B. Morton, Individually & as Secretary of the Interior, Civil No. C-75-238, D. Utah. Suit pending.

Estate of Wook-Kah-Nah, Comanche Allottee No. 1927, 65 I.D. 436 (1958)

Thomas J. Huff, Adm. with will annexed of the Estate of Wook-Kah-Nah, Deceased, Comanche Enrolled Restricted Indian No. 1927 v. Jane Asenap, Wilfred Tabbytite, J. R. Graves, Examiner of Inheritance, Bureau of Indian Affairs, Dept. of the Interior & Earl R. Wiseman, District Dir. of Internal Revenue, Civil No. 8281, W.D. Okla. Dismissed as to the Examiner of Inheritance; plaintiff dismissed suit without prejudice as to the other defendants.

Thomas J. Huff, Adm. with will annexed of the Estate of Wook-Kah-Nah v. Stewart L. Udall, Civil No. 2595-60. Judgment for defendant, June 5, 1962; remanded, 312 F. 2d 358 (1962).

State of Wyoming, 27 IBLA 137; 83 I.D. 364 (1976)

State of Wyoming, Albert E. King, Comm'r. of Public Lands v. Cecil D. Andrus, Secretary of the Interior, Civil No. C77-034K, D. Wyo. Judgment for defendant, September 8, 1977; appeal filed.

Haruyuki Yamane, et al., 19 IBLA 320 (1975)

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Young Associates, Inc., IBCA-557-4-66 (December 4, 1968)

Young Associates, Inc. v. U.S., Ct. Cl. 787-71. Judgment for defendant, January 18, 1973.

George W. Zarak, et al., Cardinal Petroleum Co., 4 IBLA 82 (1971)

Tony Rice, George W. Zarak, Arlene Zarak, William J. Zarak, Jr. & Darlene Zarak v. Rogers C. B. Morton, et al., Civil No. 1127, D. N.D. Judgment for defendant, 348 F. Supp. 254 (1972); aff'd., 479 F. 2d 58 (8th Cir. 1973); cert. denied, 414 U.S. 858 (1973).

Zeigler Coal Co., 82 I.D. 36 (1975)

Zeigler Coal Co. v. Kent Frizzell, Acting Secretary of the Interior, No. 75-1139, United States Court of Appeals, D.C. Cir. Judgment for defendant, 536 F. 2d 398 (1976).

Zeigler Coal Co., 81 I.D. 729 (1974)

International Union of United Mine Workers of America v. Stanley K. Hathaway, Secretary of the Interior, No. 75-1003, United States Court of Appeals, D.C. Cir. Rev'd. & remanded to the Board for further proceedings, 532 F. 2d 1403 (1976).

Elodymae Zwang, et al., A-30201 (February 3, 1965)

Darrell & Elodymae Zwang v. Stewart L. Udall, Civil No. 65-716-EC, S.D. Cal. Judgment for defendant, February 23, 1966; aff'd., 371 F. 2d 634 (9th Cir. 1967); no petition.

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181----------29 IBLA 310 (Mar. 30, 1977)
31 IBLA 72; 84 I.D. 309 (1977)
31 IBLA 290 (July 22, 1977)
32 IBLA 170 (Sept. 13, 1977)
33 IBLA 237 (Dec. 28, 1977)
181 et seq.--23 IBLA 353 (Jan. 24, 1977)
28 IBLA 394; 84 I.D. 91 (1977)
29 IBLA 97 (Feb. 23, 1977)
29 IBLA 170 (Mar. 14, 1977)
29 IBLA 210 (Mar. 22, 1977)
30 IBLA 259 (May 31, 1977)
30 IBLA 290 (June 1, 1977)
31 IBLA 13 (June 17, 1977)
31 IBLA 72; 84 I.D. 309 (1977)
31 IBLA 150; 84 I.D. 342 (1977)
32 IBLA 13 (Aug. 29, 1977)
32 IBLA 106 (Sept. 12, 1977)
181-263------33 IBLA 83 (Dec. 8, 1977)
181-287------M-36888; 84 I.D. 54 (1977)
M-36888 (Supp.); 84 I.D. 64
(1977)
M-36890; 84 I.D. 244 (1977)
184(d)-------30 IBLA 212 (May 20, 1977)
184(d)(1)----30 IBLA 212 (May 20, 1977)
184(h)(1)----28 IBLA 394; 84 I.D. 91 (1977)
184(h)(2)----30 IBLA 118 (May 2, 1977)
187----------32 IBLA 329 (Oct. 11, 1977)
M-36890; 84 I.D. 244 (1977)
187a---------30 IBLA 179 (May 19, 1977)
32 IBLA 325 (Oct. 11, 1977)
188----------28 IBLA 355 (Jan. 31, 1977)
28 IBLA 394; 84 I.D. 91 (1977)
30 IBLA 290 (June 1, 1977)
31 IBLA 296 (July 22, 1977)
32 IBLA 333 (Oct. 18, 1977)
33 IBLA 231 (Dec. 28, 1977)
188(a)-------28 IBLA 394; 84 I.D. 91 (1977)
M-36888; 84 I.D. 54 (1977)
188(b)-------28 IBLA 394; 84 I.D. 91 (1977)
29 IBLA 30 (Feb. 8, 1977)
29 IBLA 74 (Feb. 23, 1977)
29 IBLA 81 (Feb. 23, 1977)
29 IBLA 141 (Mar. 4, 1977)
29 IBLA 154 (Mar. 4, 1977)
29 IBLA 247 (Mar. 25, 1977)
30 IBLA 11 (Apr. 4, 1977)
30 IBLA 18 (Apr. 7, 1977)
30 IBLA 26 (Apr. 11, 1977)
30 IBLA 28 (Apr. 11, 1977)
30 IBLA 146 (May 16, 1977)
30 IBLA 153 (May 16, 1977)
30 IBLA 227 (May 26, 1977)
30 IBLA 262 (May 31, 1977)
30 IBLA 290 (June 1, 1977)
30 IBLA 379 (June 10, 1977)
31 IBLA 39 (June 21, 1977)
31 IBLA 296 (July 22, 1977)
32 IBLA 93 (Sept. 12, 1977)
32 IBLA 293 (Sept. 28, 1977)
32 IBLA 369 (Oct. 31, 1977)
33 IBLA 22 (Nov. 22, 1977)
33 IBLA 53 (Nov. 25, 1977)
33 IBLA 63 (Dec. 5, 1977)
188(c)-------28 IBLA 394; 84 I.D. 91 (1977)
29 IBLA 81 (Feb. 23, 1977)
29 IBLA 114 (Feb. 23, 1977)
29 IBLA 141 (Mar. 4, 1977)
29 IBLA 182 (Mar. 18, 1977)
30 IBLA 26 (Apr. 11, 1977)
30 IBLA 146 (May 16, 1977)
30 IBLA 153 (May 16, 1977)
30 IBLA 227 (May 26, 1977)
30 IBLA 262 (May 31, 1977)
30 IBLA 290 (June 1, 1977)

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sec. 188(c)--Con.-32 IBLA 93 (Sept. 12, 1977)
32 IBLA 293 (Sept. 28, 1977)
32 IBLA 296 (Sept. 28, 1977)
32 IBLA 325 (Oct. 11, 1977)
32 IBLA 369 (Oct. 31, 1977)
33 IBLA 63 (Dec. 5, 1977)
33 IBLA 135 (Dec. 19, 1977)
33 IBLA 231 (Dec. 28, 1977)
188(d)-------28 IBLA 394; 84 I.D. 91 (1977)
30 IBLA 290 (June 1, 1977)
188 et seq.--30 IBLA 179 (May 19, 1977)
189----------29 IBLA 170 (Mar. 14, 1977)
30 IBLA 376 (June 10, 1977)
31 IBLA 217 (July 6, 1977)
32 IBLA 199 (Sept. 16, 1977)
M-36890; 84 I.D. 244 (1977)
193----------31 IBLA 72; 84 I.D. 309 (1977)
31 IBLA 150; 84 I.D. 342 (1977)
M-36893; 84 I.D. 442 (1977)
201(a)-------M-36890; 84 I.D. 244 (1977)
201(b)-------31 IBLA 61 (June 23, 1977)
M-36893; 84 I.D. 442 (1977)
M-36894; 84 I.D. 415 (1977)
203----------31 IBLA 290 (July 22, 1977)
32 IBLA 13 (Aug. 29, 1977)
33 IBLA 3 (Nov. 14, 1977)
204----------31 IBLA 290 (July 22, 1977)
32 IBLA 170 (Sept. 13, 1977)
207----------M-36890; 84 I.D. 244 (1977)
209----------M-36888 (Supp. II);
84 I.D. 171 (1977)
211(b)-------M-36893; 84 I.D. 442 (1977)
221----------M-36893; 84 I.D. 442 (1977)
221 et seq.--30 IBLA 8 (Apr. 4, 1977)
225----------M-36888; 84 I.D. 54 (1977)
226----------2 ANCAB 98 (July 15, 1977)
2 ANCAB 115 (July 15, 1977)
2 ANCAB 126 (Aug. 4, 1977)
2 ANCAB 134 (Aug. 4, 1977)
2 ANCAB 247; 84 I.D. 1007 (1977)
29 IBLA 13 (Feb. 8, 1977)
29 IBLA 259 (Mar. 25, 1977)
29 IBLA 295 (Mar. 30, 1977)
30 IBLA 166; 84 I.D. 192 (1977)
30 IBLA 259 (May 31, 1977)
31 IBLA 150; 84 I.D. 342 (1977)
31 IBLA 167 (July 5, 1977)
31 IBLA 354 (July 25, 1977)
1 SEC. 1; 84 I.D. 176 (1977)
226(a)-------31 IBLA 150; 84 I.D. 342 (1977)
33 IBLA 116 (Dec. 16, 1977)
M-36894; 84 I.D. 415 (1977)
226(b)-------30 IBLA 123 (May 12, 1977)
31 IBLA 150; 84 I.D. 342 (1977)
31 IBLA 221 (July 7, 1977)
33 IBLA 18 (Nov. 22, 1977)
M-36888; 84 I.D. 54 (1977)
226(c)-------29 IBLA 1 (Feb. 7, 1977)
29 IBLA 218 (Mar. 22, 1977)
29 IBLA 234 (Mar. 25, 1977)
30 IBLA 70 (Apr. 18, 1977)
30 IBLA 123 (May 12, 1977)
30 IBLA 143 (May 12, 1977)
30 IBLA 288 (June 1, 1977)
30 IBLA 376 (June 10, 1977)
31 IBLA 3 (June 15, 1977)
31 IBLA 58 (June 23, 1977)
31 IBLA 119 (June 24, 1977)
31 IBLA 150; 84 I.D. 342 (1977)
31 IBLA 234 (July 12, 1977)
31 IBLA 386 (Aug. 16, 1977)
32 IBLA 106 (Sept. 12, 1977)
32 IBLA 272 (Sept. 27, 1977)
32 IBLA 341 (Oct. 21, 1977)
32 IBLA 345 (Oct. 21, 1977)
33 IBLA 116 (Dec. 16, 1977)
33 IBLA 150 (Dec. 19, 1977)
33 IBLA 213 (Dec. 21, 1977)
M-36888; 84 I.D. 54 (1977)

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sec. 226(d)-------28 IBLA 394; 84 I.D. 91 (1977)
30 IBLA 290 (June 1, 1977)
33 IBLA 53 (Nov. 25, 1977)
226(e)-------28 IBLA 394; 84 I.D. 91 (1977)
29 IBLA 74 (Feb. 23, 1977)
30 IBLA 179 (May 19, 1977)
30 IBLA 191; 84 I.D. 198 (1977)
30 IBLA 290 (June 1, 1977)
30 IBLA 296 (June 1, 1977)
31 IBLA 18 (June 17, 1977)
31 IBLA 61 (June 23, 1977)
33 IBLA 83 (Dec. 8, 1977)
226(f)-------29 IBLA 74 (Feb. 23, 1977)
31 IBLA 61 (June 23, 1977)
226(g)-------29 IBLA 97 (Feb. 23, 1977)
226(i)-------M-36888; 84 I.D. 54 (1977)
226(j)-------29 IBLA 97 (Feb. 23, 1977)
30 IBLA 179 (May 19, 1977)
30 IBLA 191; 84 I.D. 198 (1977)
30 IBLA 296 (June 1, 1977)
33 IBLA 106 (Dec. 16, 1977)
226-1--------28 IBLA 394; 84 I.D. 91 (1977)
226-1(d)-----28 IBLA 394; 84 I.D. 91 (1977)
30 IBLA 191; 84 I.D. 198 (1977)
229a---------28 IBLA 368; 84 I.D. 87 (1977)
229a(a)------28 IBLA 368; 84 I.D. 87 (1977)
261----------31 IBLA 72; 84 I.D. 309 (1977)
31 IBLA 150; 84 I.D. 342 (1977)
M-36893; 84 I.D. 442 (1977)
262----------31 IBLA 72; 84 I.D. 309 (1977)
31 IBLA 150; 84 I.D. 342 (1977)
271----------29 IBLA 170 (Mar. 14, 1977)
M-36893; 84 I.D. 442 (1977)
271-273------M-36893; 84 I.D. 442 (1977)
271 et seq.--29 IBLA 170 (Mar. 14, 1977)
281----------M-36893; 84 I.D. 442 (1977)
281 et seq.--31 IBLA 72; 84 I.D. 309 (1977)
281-87-------M-36893; 84 I.D. 442 (1977)
282 et seq.--31 IBLA 72; 84 I.D. 309 (1977)
301-305------M-36888; 84 I.D. 54 (1977)
351 et seq.--32 IBLA 357 (Oct. 21, 1977)
351-359------28 IBLA 353 (Jan. 24, 1977)
29 IBLA 33 (Feb. 10, 1977)
29 IBLA 319 (Mar. 30, 1977)
29 IBLA 330 (Mar. 31, 1977)
30 IBLA 14 (Apr. 4, 1977)
30 IBLA 187 (May 19, 1977)
30 IBLA 199 (May 20, 1977)
352----------29 IBLA 319 (Mar. 30, 1977)
29 IBLA 330 (Mar. 31, 1977)
33 IBLA 216 (Dec. 22, 1977)
501-505------M-36893; 84 I.D. 442 (1977)
521-531------M-36893; 84 I.D. 442 (1977)
601----------29 IBLA 357; 84 I.D. 137 (1977)
32 IBLA 225 (Sept. 20, 1977)
601 et seq.--29 IBLA 333 (Mar. 31, 1977)
29 IBLA 357; 84 I.D. 137 (1977)
32 IBLA 299 (Sept. 29, 1977)
33 IBLA 153 (Dec. 19, 1977)
611----------29 IBLA 333 (Mar. 31, 1977)
29 IBLA 357; 84 I.D. 137 (1977)
30 IBLA 112 (May 2, 1977)
31 IBLA 8 (June 15, 1977)
32 IBLA 46 (Sept. 2, 1977)
611 et seq.--31 IBLA 8 (June 15, 1977)
32 IBLA 46 (Sept. 2, 1977)
611-615------31 IBLA 47 (June 23, 1977)
32 IBLA 46 (Sept. 2, 1977)
612----------31 IBLA 47 (June 23, 1977)
613----------31 IBLA 47 (June 23, 1977)
621----------31 IBLA 357 (July 25, 1977)
621 et seq.--29 IBLA 201 (Mar. 22, 1977)
32 IBLA 305 (Sept. 30, 1977)
621-25-------31 IBLA 357 (July 25, 1977)
621(a)-------32 IBLA 305 (Sept. 30, 1977)
623----------32 IBLA 305 (Sept. 30, 1977)
701----------28 IBLA 339 (Jan. 17, 1977)
31 IBLA 342 (July 22, 1977)
32 IBLA 145 (Sept. 12, 1977)

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sec. 701 et seq.--28 IBLA 339 (Jan. 17, 1977)
30 IBLA 82 (Apr. 27, 1977)
702----------28 IBLA 339 (Jan. 17, 1977)
706----------30 IBLA 82 (Apr. 27, 1977)
706(b)-------28 IBLA 339 (Jan. 17, 1977)
721 et seq.--8 IBMA 31 (June 30, 1977)
727(a)-------8 IBMA 31 (June 30, 1977)
727(c)-------8 IBMA 31 (June 30, 1977)
735(e)-------8 IBMA 31 (June 30, 1977)
801-960------7 IBMA 331; 84 I.D. 208 (1977)
8 IBMA 19; 84 I.D. 332 (1977)
8 IBMA 55 (June 30, 1977)
8 IBMA 64; 84 I.D. 394 (1977)
8 IBMA 88; 84 I.D. 454 (1977)
8 IBMA 98; 84 I.D. 459 (1977)
8 IBMA 136; 84 I.D. 488 (1977)
8 IBMA 156; 84 I.D. 825 (1977)
802----------7 IBMA 280; 84 I.D. 127 (1977)
802(d)-------8 IBMA 136; 84 I.D. 488 (1977)
813(e)-------8 IBMA 156; 84 I.D. 825 (1977)
8 IBMA 230; 84 I.D. 1003 (1977)
8 IBMA 238 (Dec. 21, 1977)
813(f)-------8 IBMA 230; 84 I.D. 1003 (1977)
814(b)-------7 IBMA 234 (Feb. 7, 1977)
7 IBMA 257; 84 I.D. 103 (1977)
7 IBMA 272; 84 I.D. 124 (1977)
7 IBMA 280; 84 I.D. 127 (1977)
814(c)-------7 IBMA 279 (Mar. 31, 1977)
7 IBMA 280; 84 I.D. 127 (1977)
7 IBMA 299 (Mar. 31, 1977)
7 IBMA 300 (Mar. 31, 1977)
8 IBMA 98; 84 I.D. 459 (1977)
814(c)(1)----7 IBMA 280; 84 I.D. 127 (1977)
8 IBMA 136; 84 I.D. 488 (1977)
814(g)-------7 IBMA 234 (Feb. 7, 1977)
815----------7 IBMA 272; 84 I.D. 124 (1977)
815(a)-------7 IBMA 254 (Mar. 15, 1977)
8 IBMA 136; 84 I.D. 488 (1977)
8 IBMA 164; 84 I.D. 877 (1977)
815(d)-------7 IBMA 272; 84 I.D. 124 (1977)
816----------7 IBMA 280; 84 I.D. 127 (1977)
819----------7 IBMA 257; 84 I.D. 103 (1977)
7 IBMA 307 (May 5, 1977)
8 IBMA 27 (June 29, 1977)
8 IBMA 204; 84 I.D. 919 (1977)
8 IBMA 230; 84 I.D. 1003 (1977)
819(a)-------7 IBMA 245; 84 I.D. 99 (1977)
819(c)-------8 IBMA 216; 84 I.D. 960 (1977)
820(b)-------7 IBMA 238 (Feb. 28, 1977)
8 IBMA 43; 84 I.D. 336 (1977)
820(b)(1)----8 IBMA 164; 84 I.D. 877 (1977)
820(b)(1)(A)-8 IBMA 43; 84 I.D. 336 (1977)
820(b)(2)----8 IBMA 164; 84 I.D. 877 (1977)
821----------8 IBMA 230; 84 I.D. 1003 (1977)
863----------8 IBMA 136; 84 I.D. 488 (1977)
863(d)(1)----8 IBMA 136; 84 I.D. 488 (1977)
864(a)-------8 IBMA 98; 84 I.D. 459 (1977)
877(j)-------7 IBMA 331; 84 I.D. 208 (1977)
957----------8 IBMA 230; 84 I.D. 1003 (1977)
1001 et seq.--29 IBLA 210 (Mar. 22, 1977)
33 IBLA 160 (Dec. 20, 1977)
1001-1025-----29 IBLA 37 (Feb. 16, 1977)
30 IBLA 107 (May 2, 1977)
1001(e)-------29 IBLA 37 (Feb. 16, 1977)
30 IBLA 107 (May 2, 1977)
31 IBLA 191 (July 5, 1977)
1002----------29 IBLA 37 (Feb. 16, 1977)
1003----------29 IBLA 37 (Feb. 16, 1977)
30 IBLA 107 (May 2, 1977)
31 IBLA 191 (July 5, 1977)
1004----------33 IBLA 135 (Dec. 19, 1977)
1004(c)-------33 IBLA 135 (Dec. 19, 1977)
1014(b)-------32 IBLA 357 (Oct. 21, 1977)
33 IBLA 71 (Dec. 5, 1977)
1014(c)-------32 IBLA 357 (Oct. 21, 1977)
1020(b)-------29 IBLA 210 (Mar. 22, 1977)
32 IBLA 275 (Sept. 27, 1977)
1024----------29 IBLA 210 (Mar. 22, 1977)
33 IBLA 160 (Dec. 20, 1977)

TITLE 33:

sec. 1157----------M-36890; 84 I.D. 244 (1977)

TITLE 42:

sec. 1857----------M-36890; 84 I.D. 244 (1977)
1983----------32 IBLA 106 (Sept. 12, 1977)
2097----------30 IBLA 14 (Apr. 4, 1977)
4321 et seq.---29 IBLA 57 (Feb. 16, 1977)
4332----------30 IBLA 388; 84 I.D. 282 (1977)
32 IBLA 361 (Oct. 25, 1977)
4332(2)(c)-----2 ANCAB 247; 84 I.D. 1007 (1977)
29 IBLA 48 (Feb. 16, 1977)
4332(2)(c)(v)--30 IBLA 388; 84 I.D. 282 (1977)
4332(2)(G)-----30 IBLA 388; 84 I.D. 282 (1977)
4601 et seq.---2 OHA 109 (Apr. 21, 1977)
2 OHA 117 (May 3, 1977)
2 OHA 135 (June 22, 1977)
4601(6)--------2 OHA 147 (Aug. 9, 1977)
4603----------2 OHA 147 (Aug. 9, 1977)
4622(a)--------2 OHA 123 (June 13, 1977)
2 OHA 156 (Oct. 17, 1977)
4622(c)--------2 OHA 113 (Apr. 29, 1977)
4623----------2 OHA 147 (Aug. 9, 1977)
2 OHA 160 (Oct. 19, 1977)
2 OHA 163 (Oct. 19, 1977)
4623(a)--------2 OHA 138 (June 29, 1977)
4624----------2 OHA 147 (Aug. 9, 1977)
2 OHA 153 (Sept. 20, 1977)
2 OHA 156 (Oct. 17, 1977)
4625----------2 OHA 147 (Aug. 9, 1977)
4626----------2 OHA 147 (Aug. 9, 1977)
4653----------2 OHA 135 (June 22, 1977)
4662----------2 OHA 142 (Aug. 8, 1977)

TITLE 43:

sec. 21----------29 IBLA 307 (Mar. 30, 1977)
141----------28 IBLA 368; 84 I.D. 87 (1977)
29 IBLA 107 (Feb. 23, 1977)
30 IBLA 112 (May 2, 1977)
31 IBLA 43 (June 21, 1977)
31 IBLA 357 (July 25, 1977)
141 et seq.---31 IBLA 357 (July 25, 1977)
142----------28 IBLA 368; 84 I.D. 87 (1977)
31 IBLA 139 (June 30, 1977)
31 IBLA 357 (July 25, 1977)
148----------M-36886; 84 I.D. 1 (1977)
161 et seq.---30 IBLA 239 (May 31, 1977)
31 IBLA 162 (July 1, 1977)
164----------28 IBLA 314 (Jan. 14, 1977)
29 IBLA 150 (Mar. 4, 1977)
182----------31 IBLA 242 (July 18, 1977)
185----------30 IBLA 311 (June 6, 1977)
270----------30 IBLA 157 (May 18, 1977)
270-1---------29 IBLA 160 (Mar. 9, 1977)
270-1 et seq.-29 IBLA 255 (Mar. 25, 1977)
270-1--270-3--29 IBLA 250 (Mar. 25, 1977)
29 IBLA 255 (Mar. 25, 1977)
30 IBLA 157 (May 18, 1977)
279----------28 IBLA 314 (Jan. 14, 1977)
291 et seq.---29 IBLA 210 (Mar. 22, 1977)
31 IBLA 162 (July 1, 1977)
33 IBLA 36 (Nov. 25, 1977)
292----------31 IBLA 162 (July 1, 1977)
293----------33 IBLA 36 (Nov. 25, 1977)
300----------28 IBLA 368; 84 I.D. 87 (1977)
315-315g------30 IBLA 277 (June 1, 1977)
315(a)---------32 IBLA 123 (Sept. 12, 1977)
315(b)---------33 IBLA 7 (Nov. 15, 1977)
33 IBLA 225 (Dec. 28, 1977)
315f----------31 IBLA 162 (July 1, 1977)
315g----------32 IBLA 1 (Aug. 24, 1977)
32 IBLA 275 (Sept. 27, 1977)
315g(d)--------32 IBLA 1 (Aug. 24, 1977)
315h----------30 IBLA 243 (May 31, 1977)
315h-315m-----30 IBLA 277 (June 1, 1977)
315m----------30 IBLA 1 (Apr. 1, 1977)
30 IBLA 277 (June 1, 1977)

TITLE 43 (Continued):

sec. 315m---Con.--32 IBLA 123 (Sept. 12, 1977)
32 IBLA 311; 84 I.D. 874 (1977)
32 IBLA 395 (Nov. 9, 1977)
315n---------30 IBLA 277 (June 1, 1977)
315o---------30 IBLA 277 (June 1, 1977)
315o-1-------30 IBLA 277 (June 1, 1977)
315 et seq.--29 IBLA 262 (Mar. 25, 1977)
30 IBLA 14 (Apr. 4, 1977)
30 IBLA 277 (June 1, 1977)
32 IBLA 123 (Sept. 12, 1977)
32 IBLA 174; 84 I.D. 475 (1977)
32 IBLA 395 (Nov. 9, 1977)
316-316o-----29 IBLA 255 (Mar. 25, 1977)
316 et seq.--29 IBLA 255 (Mar. 25, 1977)
321----------32 IBLA 372 (Oct. 31, 1977)
321 et seq.--33 IBLA 221 (Dec. 22, 1977)
325----------32 IBLA 372 (Oct. 31, 1977)
329----------30 IBLA 311 (June 6, 1977)
32 IBLA 286 (Sept. 27, 1977)
333----------32 IBLA 286 (Sept. 27, 1977)
334----------32 IBLA 286 (Sept. 27, 1977)
371 et seq.--M-36886; 84 I.D. 1 (1977)
416----------M-36886; 84 I.D. 1 (1977)
476----------29 IBLA 220 (Mar. 23, 1977)
641----------32 IBLA 89 (Sept. 2, 1977)
641 et seq.--32 IBLA 89 (Sept. 2, 1977)
32 IBLA 372 (Oct. 31, 1977)
643----------32 IBLA 89 (Sept. 2, 1977)
666----------28 IBLA 368; 84 I.D. 87 (1977)
666(a)-------28 IBLA 368; 84 I.D. 87 (1977)
666(b)-------28 IBLA 368; 84 I.D. 87 (1977)
682----------2 ANCAB 1; 84 I.D. 349 (1977)
682(a)-------31 IBLA 13 (June 17, 1977)
682(b)-------31 IBLA 13 (June 17, 1977)
687a---------28 IBLA 345 (Jan. 24, 1977)
29 IBLA 177 (Mar. 18, 1977)
29 IBLA 348 (Mar. 31, 1977)
30 IBLA 157 (May 18, 1977)
30 IBLA 359 (June 10, 1977)
31 IBLA 203 (July 6, 1977)
31 IBLA 363 (July 28, 1977)
32 IBLA 235 (Sept. 21, 1977)
687a et seq.-29 IBLA 348 (Mar. 31, 1977)
687a-1-------28 IBLA 345 (Jan. 24, 1977)
29 IBLA 177 (Mar. 18, 1977)
30 IBLA 359 (June 10, 1977)
31 IBLA 363 (July 28, 1977)
M-36889; 84 I.D. 188 (1977)
718-720------30 IBLA 74 (Apr. 18, 1977)
752----------31 IBLA 342 (July 22, 1977)
772----------30 IBLA 92 (Apr. 29, 1977)
30 IBLA 95 (Apr. 29, 1977)
31 IBLA 342 (July 22, 1977)
851----------33 IBLA 160 (Dec. 20, 1977)
852----------33 IBLA 160 (Dec. 20, 1977)
852(a)-------33 IBLA 160 (Dec. 20, 1977)
852(a)(1)----33 IBLA 160 (Dec. 20, 1977)
852(a)(2)----33 IBLA 160 (Dec. 20, 1977)
869 et seq.--29 IBLA 220 (Mar. 23, 1977)
872(a)(1)----33 IBLA 160 (Dec. 20, 1977)
898----------32 IBLA 218 (Sept. 19, 1977)
945----------2 ANCAB 1; 84 I.D. 349 (1977)
29 IBLA 210 (Mar. 22, 1977)
945a---------29 IBLA 210 (Mar. 22, 1977)
946 et seq.--33 IBLA 225 (Dec. 28, 1977)
946-949------M-36886; 84 I.D. 1 (1977)
951----------M-36886; 84 I.D. 1 (1977)
952----------33 IBLA 225 (Dec. 28, 1977)
959----------32 IBLA 384 (Nov. 3, 1977)
M-36886; 84 I.D. 1 (1977)
961----------29 IBLA 57 (Feb. 16, 1977)
32 IBLA 205 (Sept. 19, 1977)
M-36886; 84 I.D. 1 (1977)
975(d)-------2 ANCAB 1; 84 I.D. 349 (1977)
981 et seq.--31 IBLA 304; 84 I.D. 421 (1977)
982----------29 IBLA 132 (Feb. 23, 1977)
31 IBLA 304; 84 I.D. 421 (1977)
982 et seq.--32 IBLA 129 (Sept. 12, 1977)

TITLE 43 (Continued):

sec. 987----------31 IBLA 304; 84 I.D. 421 (1977)
1002---------33 IBLA 160 (Dec. 20, 1977)
1068---------30 IBLA 320; 84 I.D. 276 (1977)
31 IBLA 145 (June 30, 1977)
31 IBLA 304; 84 I.D. 421 (1977)
32 IBLA 129 (Sept. 12, 1977)
32 IBLA 228 (Sept. 20, 1977)
32 IBLA 378 (Nov. 1, 1977)
33 IBLA 225 (Dec. 28, 1977)
1068 et seq.--29 IBLA 146 (Mar. 4, 1977)
30 IBLA 320; 84 I.D. 276 (1977)
32 IBLA 228 (Sept. 20, 1977)
32 IBLA 378 (Nov. 1, 1977)
1068(b)-------29 IBLA 146 (Mar. 4, 1977)
1137(a)-------M-36888; 84 I.D. 54 (1977)
1161---------32 IBLA 272 (Sept. 27, 1977)
1165---------29 IBLA 192 (Mar. 18, 1977)
1171---------2 ANCAB 214; 84 I.D. 982 (1977)
33 IBLA 182 (Dec. 21, 1977)
1171 et seq.--33 IBLA 182 (Dec. 21, 1977)
1181a--------33 IBLA 91 (Dec. 16, 1977)
1181a-1181j---30 IBLA 277 (June 1, 1977)
1201---------32 IBLA 174; 84 I.D. 475 (1977)
1331-43------M-36888; 84 I.D. 54 (1977)
M-36888 (Supp.);
84 I.D. 64 (1977)
1334---------31 IBLA 127 (June 30, 1977)
1334(a)(1)----M-36888 (Supp.);
84 I.D. 64 (1977)
1334(a)(2)----M-36888 (Supp.);
84 I.D. 64 (1977)
1335---------31 IBLA 127 (June 30, 1977)
1335(a)-------31 IBLA 127 (June 30, 1977)
1335(b)-------31 IBLA 127 (June 30, 1977)
1337---------31 IBLA 127 (June 30, 1977)
1374---------30 IBLA 118 (May 2, 1977)
1411 et seq.--32 IBLA 77 (Sept. 2, 1977)
1411-18------32 IBLA 77 (Sept. 2, 1977)
1414---------32 IBLA 77 (Sept. 2, 1977)
1431-1435----31 IBLA 210 (July 6, 1977)
1601-1624----1 ANCAB 290 (Jan. 10, 1977)
1 ANCAB 294 (Jan. 14, 1977)
1 ANCAB 300 (Feb. 15, 1977)
1 ANCAB 305; 84 I.D. 105 (1977)
1 ANCAB 317 (Apr. 8, 1977)
1 ANCAB 322 (Apr. 8, 1977)
1 ANCAB 327 (Apr. 15, 1977)
1 ANCAB 334 (Apr. 15, 1977)
1 ANCAB 341 (Apr. 28, 1977)
1 ANCAB 345 (May 4, 1977)
1 ANCAB 348 (May 4, 1977)
1 ANCAB 351 (May 4, 1977)
1 ANCAB 354 (May 4, 1977)
2 ANCAB 1; 84 I.D. 349 (1977)
2 ANCAB 98 (July 15, 1977)
2 ANCAB 115 (July 15, 1977)
2 ANCAB 123 (July 25, 1977)
2 ANCAB 126 (Aug. 4, 1977)
2 ANCAB 134 (Aug. 4, 1977)
2 ANCAB 142 (Sept. 23, 1977)
2 ANCAB 150; 84 I.D. 891 (1977)
2 ANCAB 166 (Nov. 16, 1977)
2 ANCAB 169 (Nov. 8, 1977)
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32 IBLA 5 (Aug. 24, 1977)
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1611----------1 SEC. 1; 84 I.D. 176 (1977)
1613(e)--------1 SEC. 1; 84 I.D. 176 (1977)
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37 STAT:

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43 STAT:

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47 STAT:

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48 STAT:

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52 STAT:

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54 STAT:

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56 STAT:

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58 STAT:

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60 STAT:

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68 STAT:

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69 STAT:

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76 STAT:

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77 STAT:

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78 STAT:

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80 STAT:

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81 STAT:

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83 STAT:

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84 STAT:

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88 STAT:

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89 STAT:

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90 STAT:

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5219----------M-36886; 84 I.D. 1 (1977)

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ACCOUNTS

PAYMENTS

Appellant's submission with simultaneous oil and gas lease offer of a personal check to cover filing fees satisfied 43 CFR 3112.2-1(a)(1) despite drawee bank's subsequent refusal to honor that check, since the refusal is shown by evidence to be error on part of bank alone.

Hugh Burnett, 28 IBLA 303 (Jan. 10, 1977)

The authorized officer may not deem an oil and gas rental payment to have been timely filed, pursuant to 43 CFR 1821.2-2(g) if it is received at the State Office when it is not open to the public, even though the payment is presented on the last day in which payment can be made. Such payment is deemed to have been made on the day and hour the office is next open to business, as provided in 43 CFR 1821.2-2(d).

It is proper to deny a petition for reinstatement of an oil and gas lease terminated for failure to pay rental on time as required by sec. 31 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 188(b) (1970), where 20 minutes before the State Office closes to the public on the last day on which rental can be paid, petitioner instructs by telephone an agent who lives in the vicinity of the State Office to make the payment and the agent who alleges she was delayed by traffic and security measures makes payment after the office is closed to the public. In such circumstances the petitioner has not shown that his failure to pay the rental on or before the anniversary date of the lease was justifiable or not due to a lack of reasonable diligence.

Bob Burch, 32 IBLA 93 (Sept. 12, 1977)

Where cattle are admitted to an allotment at the beginning of the usual grazing season but prior to the issuance of a license for that season, and payment is later made by a check which recites that it is "payment in full for 1975 grazing fee," the Bureau of Land Management may properly deposit the check, allotting part of the proceeds for the grazing license for the rest of the season, and deposit the remainder of the proceeds in a suspense account pending resolution of the trespass. Such action indicates that the check was not accepted in settlement of the trespass damages, and cashing the check does not constitute an accord and satisfaction of the trespass damages.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

The provision in 43 CFR 3825.1(b) that failure to pay annual rental on or before the anniversary date of a mining claim located in the Papago Indian Reservation "shall be deemed sufficient grounds for invalidating the claim" is directory, not mandatory. Where the mining claimant does not pay rental for 2 years on two claims and is 1-1/2 years late on other claims, and where he has not paid the rental prior to receiving decisions from the Bureau of Land Management holding the claims invalid, the mining claims must be held invalid.

Louis B. Ellsworth, Jr., 33 IBLA 26 (Nov. 22, 1977)

ACCOUNTS--Continued

PAYMENTS--Continued

The timeliness of filing Federal tax returns and payments and of making rental payments for Federal oil and gas leases are governed by different statutes and regulations and are not the same. Receipt in the proper Bureau of Land Management office determines the timeliness of rental payment, whereas the Internal Revenue Service uses a postmark date. The postmark date is relevant in considering a Federal oil and gas lease rental only to determine if the lessee exercised reasonable diligence so as to warrant reinstatement of a lease terminated for failure to pay the rental timely.

David R. Smith and Darla L. Smith, 33 IBLA 63 (Dec. 5, 1977)

REFUNDS

Where a noncompetitive oil and gas lease is canceled for having been erroneously issued because the lands involved were part of an incorporated city (43 CFR 3101.1-1(a)(3) the Department may return the rentals pursuant to the repayment statute, 43 U.S.C. § 1374 (1970), in appropriate circumstances where the lessees have derived no benefit from the possession of the lease and there are no other factors militating against repayment.

Bruce Anderson, 30 IBLA 118 (May 2, 1977)

ACT OF AUGUST 15, 1894

The Agreement of Dec. 4, 1893, between the Yuma (now Quechan) Indians and the United States, ratified in sec. 17 of the Act of Aug. 15, 1894, was an absolute, present cession of any and all interests of the Indians to the nonirrigable lands in the Fort Yuma Indian Reservation created by Executive Order of Jan. 9, 1884.

Assuming that the Act of Aug. 15, 1894, was a conditional rather than an absolute cession by the Yuma (now Quechan) Indians of their rights to the nonirrigable lands in the Fort Yuma Indian Reservation, all material conditions on the part of the United States were met, and the cession has occurred.

Title to Certain Land Within the Boundaries of the Fort Yuma Indian Reservation as Established by the Executive Order of Jan. 9, 1884, M-36886 (Jan. 18, 1977) 84 I.D. 1

ACT OF AUGUST 18, 1894

Applications filed for temporary withdrawals of land for proposed development under the Carey Act of 1894 must be rejected where the lands have been previously withdrawn for other purposes.

The Bureau of Land Management should suspend consideration of the applications under the Carey Act pending Departmental action to revise and recodify previously deleted regulations which provide guidance for the administration of the Carey Act.

Idaho Department of Water Resources, 32 IBLA 89 (Sept. 2, 1977)

ACT OF JANUARY 31, 1901

Under 30 U.S.C. §§ 162 and 262 (1970), valuable deposits of sodium compounds are not open to location and disposition under the mining laws, but may be disposed of only under the Mineral Leasing Act, except for certain claims under 43 CFR 3501.1-1(b), existent at passage of Mineral Leasing Act of 1920 which have since been maintained in accordance with statute and regulation.

Permian Mud Service, Inc., 31 IBLA 150 (June 30, 1977)
84 I.D. 342

ACT OF APRIL 21, 1904

Sec. 25 of the Act of Apr. 21, 1904, which authorized the application of the Reclamation Act of 1902 to the Yuma Indian Reservation, did not repeal by implication sec. 17 of the Act of Aug. 15, 1894, which provided for the cession, reclamation and allotment of the Reservation, and is in no way inconsistent with the 1894 Act.

Title to Certain Land Within the Boundaries of the Fort Yuma Indian Reservation as Established by the Executive Order of Jan. 9, 1884, M-36886 (Jan. 18, 1977)
84 I.D. 1

ACT OF MARCH 15, 1910

Applications filed for temporary withdrawals of land for proposed development under the Carey Act of 1894 must be rejected where the lands have been previously withdrawn for other purposes.

Idaho Department of Water Resources, 32 IBLA 89 (Sept. 2, 1977)

ACT OF JUNE 25, 1910

Where prior to 1920 a powersite withdrawal was created by executive order under authority of the Act of June 25, 1910, the withdrawn land remained open to the location of mining claims for metalliferous minerals until passage of the Federal Power Act on June 10, 1920, which closed powersites to all entry, location or disposal. Any mining claim located thereafter on powersite lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act or the location of the claim has been made in accordance with the Act of Aug. 11, 1955, 30 U.S.C. § 621 (1970). The latter Act did not operate retroactively to validate void claims.

Henry Stagnaro, 31 IBLA 357 (July 25, 1977)

ACT OF JUNE 10, 1920

Where prior to 1920 a powersite withdrawal was created by executive order under authority of the Act of June 25, 1910, the withdrawn land remained open to the location of mining claims for metalliferous minerals until passage of the Federal Power Act on June 10, 1920, which closed powersites to all entry, location or disposal. Any mining claim located thereafter on powersite lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act or the location of the claim

ACT OF JUNE 10, 1920--Continued

has been made in accordance with the Act of Aug. 11, 1955, 30 U.S.C. § 621 (1970). The latter Act did not operate retroactively to validate void claims.

Land reserved for a reservoir site by executive order under authority of the Pickett Act of June 25, 1910, to conserve water for irrigation purposes, remained open to the location of mining claims for metalliferous minerals, and the provisions of the Federal Power Act of June 10, 1920, would not operate to bar the location of such claims unless and until a powersite classification was subsequently imposed.

Henry Stagnaro, 31 IBLA 357 (July 25, 1977)

ACT OF JUNE 18, 1934

The provision in 43 CFR 3825.1(b) that failure to pay annual rental on or before the anniversary date of a mining claim located in the Papago Indian Reservation "shall be deemed sufficient grounds for invalidating the claim" is directory, not mandatory. Where the mining claimant does not pay rental for 2 years on two claims and is 1-1/2 years late on other claims, and where he has not paid the rental prior to receiving decisions from the Bureau of Land Management holding the claims invalid, the mining claims must be held invalid.

When a mining claim located in the Papago Indian Reservation is declared invalid for failure to pay annual rental timely, and that fact is not disputed, a hearing is not required as there are no issues of fact involved but only of law.

Louis B. Ellsworth, Jr., 33 IBLA 26 (Nov. 22, 1977)

ACT OF AUGUST 13, 1949

Lands which have been designated by the Act of Aug. 13, 1949, as public domain are not leasable under the Mineral Leasing Act for Acquired Lands or Reorganization Plan No. 3 of 1946, even though they may have been acquired lands prior to the Act of Aug. 13, 1949. A prospecting permit for uranium on such lands will be denied.

John F. Meadows, 30 IBLA 14 (Apr. 4, 1977)

ACT OF AUGUST 11, 1955

Where prior to 1920 a powersite withdrawal was created by executive order under authority of the Act of June 25, 1910, the withdrawn land remained open to the location of mining claims for metalliferous minerals until passage of the Federal Power Act on June 10, 1920, which closed powersites to all entry, location or disposal. Any mining claim located thereafter on powersite lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act or the location of the claim has been made in accordance with the Act of Aug. 11, 1955, 30 U.S.C. § 621 (1970). The latter Act did not operate retroactively to validate void claims.

Henry Stagnaro, 31 IBLA 357 (July 25, 1977)

ACT OF OCTOBER 8, 1964

Where the State Office, following a recommendation of the National Park Service rejects an application for an oil and gas lease in the Lake Mead National Recreation Area on the basis of a general environmental review of the consequences of oil and gas leasing in the Recreation Area, but which does not specifically show that the lands involved are of a particular value in the Recreation Area as a whole and that leasing subject to stipulations will not suffice to protect the recreation and other values of the land, the case will be remanded for a particular application of the environmental review to that land.

Robert R. Wahl, Howard Yee, 28 IBLA 305 (Jan. 13, 1977)

ACT OF DECEMBER 15, 1971

One who has laid claim, pursuant to the Wild Free-Roaming Horses and Burros Act, to horses on the public lands and who does not remove them within a reasonable period, is subject to having the renewal of his grazing lease denied.

Truman and Velma Cross, 29 IBLA 4 (Feb. 7, 1977)

ACT OF OCTOBER 21, 1976

H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 1 (1976), shows that the purpose of the Act of Oct. 21, 1976 (the Federal Land Policy and Management Act), which repealed the homestead laws, except as to certain lands in Alaska, was to repeal obsolete statutes relating to public lands that were incongruent with today's national goals.

Arthur R. Wallace, 30 IBLA 239 (May 31, 1977)

ADMINISTRATIVE AUTHORITY
(See also Federal Employees and Officers, Secretary of the Interior.)

GENERALLY

The Department of the Interior does not have the authority to modify a statute ratifying an agreement with an Indian tribe on the grounds of fraud or coercion in the execution of the agreement.

Title to Certain Land Within the Boundaries of the Fort Yuma Indian Reservation as Established by the Executive Order of Jan. 9, 1884, M-36886 (Jan. 18, 1977)
84 I.D. 1

Reliance upon erroneous advice by Bureau of Land Management employees cannot estop the United States or confer upon an applicant any rights not authorized by law. 43 CFR 1810.3(c). Where it is not established that the asserted advice was erroneous, estoppel does not operate.

United States v. Ronald B. Tippetts, 29 IBLA 348 (Mar. 31, 1977)

ADMINISTRATIVE AUTHORITY--Continued

GENERALLY--Continued

The Bureau of Land Management, in exercise of its authority to regulate the acquisition of rights in the public lands, may contest any unpatented mining claim located on public land under its jurisdiction to determine, among other things, if the claimant has discovered on his mining claim a valuable mineral deposit as required by 30 U.S.C. § 22 (1970).

United States v. Gwendolyn McClurg, et al., 31 IBLA 8 (June 15, 1977)

Until such time as the Department promulgates regulations, policy guidelines or criteria implementing sec. 302 of the Federal Land Policy and Management Act of 1976, the Bureau of Land Management may properly defer action on the proposed creation of an estate in Federal land thereunder.

Treva L. Berger, 31 IBLA 389 (Aug. 19, 1977)

Reliance upon erroneous or incomplete information provided by the Bureau of Land Management employees cannot create any rights not authorized by law.

W. R. C. Croley, 32 IBLA 5 (Aug. 24, 1977)

Verner F. Sorenson, 32 IBLA 341 (Oct. 21, 1977)

Pursuant to the Property Clause of the U.S. Const. art. IV, § 3, cl. 2, Congress has enacted the Taylor Grazing Act, 43 U.S.C. § 315 et seq. (1970), and other statutory authority which empower the Secretary of the Interior to define what conduct constitutes a grazing trespass and to determine whether or not an individual has committed a trespass.

Under the Supremacy Clause, U.S. Const., art. VI, cl. 2, Federal laws, including Federal grazing regulations, override conflicting State laws with respect to public lands.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

The Secretary of the Interior has the authority to determine the validity of mining claims on any public lands of the United States, including lands within the National Forest System, after adequate notice and opportunity for hearing. A mining claim contest initiated under the authority of the Secretary of the Interior may be prosecuted by counsel employed by the Department of Agriculture acting on behalf of the Forest Service where such action is in accordance with a Memorandum of Understanding between the agencies.

United States v. Ernest F. Diven and Richard J. T. Anderson, 32 IBLA 361 (Oct. 25, 1977)

ADMINISTRATIVE AUTHORITY--Continued

GENERALLY--Continued

Reliance upon erroneous and incomplete information provided by Federal employees cannot create any rights not authorized by law.

Mark W. Boone and John L. Dutra, 33 IBLA 32 (Nov. 25, 1977)

ESTOPPEL

Where an applicant for grazing privileges does not show the type of misconduct which would be a basis for estoppel against the Government, the provisions of 43 CFR 4115.2-1(e)(9)(i) and (e)(13)(i) cannot be waived on the basis of such misconduct.

A. D. Findlay (Appellant), Vermillion Cliff Cattle Co. (Intervenor), 29 IBLA 262 (Mar. 25, 1977)

Reliance upon erroneous advice by Bureau of Land Management employees cannot estop the United States or confer upon an applicant any rights not authorized by law. 43 CFR 1810.3(c). Where it is not established that the asserted advice was erroneous, estoppel does not operate.

United States v. Ronald B. Tippetts, 29 IBLA 348 (Mar. 31, 1977)

The fact that a mining claimant has held a claim for many years and performed work on the claim does not, by itself, create any rights against the Government which will estop the Government from determining the validity of the claim. It is incumbent upon the locator of a mining claim to exercise considerable care in ascertaining the status of the land embraced in the claim and the limitations of his rights as the holder of an unpatented mining claim. Failure of a Government employee to advise appellant that the land embraced in the mining claim was closed to mining location cannot give life to an invalid claim.

Arthur W. Boone, 32 IBLA 305 (Sept. 30, 1977)

Reliance upon erroneous or incomplete information provided by the Bureau of Land Management employees cannot create any rights not authorized by law.

Verner F. Sorenson, 32 IBLA 341 (Oct. 21, 1977)

Reliance upon erroneous and incomplete information provided by Federal employees cannot create any rights not authorized by law.

Mark W. Boone and John L. Dutra, 33 IBLA 32 (Nov. 25, 1977)

ADMINISTRATIVE AUTHORITY--Continued

ESTOPPEL--Continued

The failure of a noncompetitive oil and gas lease offeror to complete the date on the simultaneous oil and gas drawing entry card is not excused, and the Department is not estopped to reject such an offer, by his reliance on the Department's prior erroneous issuance of a lease in acceptance of an offer which was deficient for the same reason.

Tina A. Regan, 33 IBLA 213 (Dec. 21, 1977)

ADMINISTRATIVE PRACTICE

The denial of a private landowner's request that the Bureau of Land Management share in the expenses of constructing a fence between Federal and private land will be upheld where the landowner has failed to show a valid legal or factual reason for granting the request.

John L. Timm and Ruth D. Blomgren, 30 IBLA 317 (June 6, 1977)

A special recreation use permit for commercial boat operations may be denied renewal for nonuse over a 2-year period of any allocated passenger days under a properly noticed "use or lose" policy. However, where the permit program is relatively recent and administrative techniques are not fully reliable, and where the appellant documents on appeal some use of its allocation during the 2-year period, the permit should not be denied renewal under the "use or lose" policy.

Canyoneers, Inc., 30 IBLA 354 (June 9, 1977)

Where a decision of the Board of Land Appeals is based upon an interpretation of Departmental policy, and that policy is subsequently revised and clarified so as to impel a different result in the case without prejudice to the right of any third party, on reconsideration by the Board that portion of its original decision will be modified and the revised policy will be implemented.

Warner Bergman (On Reconsideration), 31 IBLA 21 (June 20, 1977)

Where an oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure contains the name of an additional party in interest and the statement of interest, copy or explanation of the agreement between the parties, and evidence of the qualifications of the additional party are not filed within the time required by 43 CFR 3102.7, the offer must be rejected.

Michael J. Radigan, Robert K. Raines, 31 IBLA 58 (June 23, 1977)

ADMINISTRATIVE PRACTICE--Continued

Where a protest has been made against the validity of a drawing entry card (DEC) in the simultaneous oil and gas lease filing procedure, it is improper to issue a lease in response to the protested DEC before the protest is finally dismissed. The Board of Land Appeals, rather than a BLM State Office, has the authority to make final administrative determinations for the Department in matters relating to protests against oil and gas lease offers.

D. E. Pack, 31 IBLA 283 (July 22, 1977)

Where an oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure contains the name of additional parties and the statements of interest, copy or explanation of the agreement among the parties, and evidence of the qualifications of the additional parties are not filed within the time required by 43 CFR 3102.7, the offer must be rejected.

Verner F. Sorenson, 32 IBLA 341 (Oct. 21, 1977)

Where an area manager's decision divides the sec. 15 grazing use of a tract of public land between two applicants on the assumption that both are qualified preference-right claimants, and it is determined on appeal that one claimant is not qualified, the decision will be set aside and the case remanded to the Bureau of Land Management for determination of the rights of the other applicant.

Mark X. Trask, 32 IBLA 395 (Nov. 9, 1977)

ADMINISTRATIVE PROCEDURE
(See also Appeals, Contests and Protests, Hearings, Rules of Practice.)

GENERALLY

The U.S. Geological Survey is the technical expert of the Department of the Interior in matters concerning geologic evaluations. The Bureau of Land Management is entitled to rely on mineral determinations of Survey, such as qualification of a test well as a discovery well defined by a unit agreement, in the absence of a clear and definite showing of error.

Corrine Grace, 30 IBLA 296 (June 1, 1977)

Where, pursuant to 43 U.S.C. § 315g (1970), a State has acquired land subject to a reservation of minerals to the United States, and the State thereafter leases the surface of the land to a corporation for purposes which are plainly incompatible with mining, the surface lessee has standing to initiate a private contest to determine the validity of unpatented mining claims located on the land. It is not essential to the cause of action that there be an actual physical interference by one party with the other party's use of the land if their respective interests are clearly and potentially conflicting.

Continental Oil Co. v. Aztec Exploration and Development Co., 32 IBLA 1 (Aug. 24, 1977)

ADMINISTRATIVE PROCEDURE--Continued

GENERALLY--Continued

In a mining claim contest where a contestee is of the opinion that the Government did not make a prima facie case of no discovery, he may move to have the case dismissed at the conclusion of the Government's case, and then rest. The contest complaint could be dismissed if the Administrative Law Judge rules that no prima facie case had been made of lack of discovery and there is no other evidence in the record to support the charges in the complaint. But if the contestee goes forward after making such a motion to dismiss and presents his evidence, that evidence must be considered as part of the entire record and its probative value will be weighed. Thus, even if the Government has failed to make a prima facie case, evidence presented by the contestee which supports the Government's contest charges may be used against the contestee, regardless of the defects in the Government's case.

In a proceeding to determine the validity of an unpatented mining claim the claimants must prevail, if at all, upon the strength of their own case, rather than upon any weakness in that of the Government.

United States v. R. E. Rodgers and Barbara J. Rodgers, 32 IBLA 77 (Sept. 2, 1977)

The timeliness of filing Federal tax returns and payments and of making rental payments for Federal oil and gas leases are governed by different statutes and regulations and are not the same. Receipt in the proper Bureau of Land Management office determines the timeliness of rental payment, whereas the Internal Revenue Service uses a postmark date. The postmark date is relevant in considering a Federal oil and gas lease rental only to determine if the lessee exercised reasonable diligence so as to warrant reinstatement of a lease terminated for failure to pay the rental timely.

David R. Smith and Darla L. Smith, 33 IBLA 63 (Dec. 5, 1977)

ADJUDICATION

A delay in the adjudication of an application by officers or employees of the Department cannot create rights in Federal property contrary to law.

Guy W. Franson, 30 IBLA 123 (May 12, 1977)

Where, in Alaska, a settlement or occupancy claim is initiated by the filing of a location notice which is acceptable on its face at a time when the land is open to the establishment of such a claim, the notice of location is acceptable for recordation by the BLM. But whether the BLM chooses to record the location notice is totally immaterial to a consideration of the validity of the claim, and BLM decisions purporting to adjudicate the validity of any such claim should address that issue on its merits rather than the acceptability of the notice for recordation.

John D. Ketscher, Alfred L. DeCicco, 32 IBLA 235 (Sept. 21, 1977)

ADMINISTRATIVE PROCEDURE--Continued

ADJUDICATION--Continued

Where a decision calls upon an applicant to supply certain documents and make certain showings in support of its mineral patent application or face rejection of the application, and on appeal it is established that all of the documents and evidence called for had already been furnished by the applicant and incorporated in the case record, where they were apparently overlooked by those who examined the application, the decision will be reversed.

Alaska Placer Co., 33 IBLA 187 (Dec. 21, 1977)
84 I.D. 990

ADMINISTRATIVE LAW JUDGES

Administrative hearings required in grazing trespass cases are not an unlawful exercise of judicial power and meet constitutional requirements and the standards of the Administrative Procedure Act. The constitutional requirement of due process is not violated merely because an Administrative Law Judge is employed by the Department of the Interior.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

A mining claim will be declared null and void where the Board's de novo review of the evidence submitted at a hearing, held in accordance with the provisions of the Administrative Procedure Act and presided over by an Administrative Law Judge qualified under the Act, establishes that the claimant has not satisfied the requirements of discovery, and there was no error in the conduct of the proceeding.

United States v. Ernest F. Diven and Richard J. T. Anderson, 32 IBLA 361 (Oct. 25, 1977)

ADMINISTRATIVE PROCEDURE ACT

Where the answer to a mining contest complaint denying the charges is not timely filed, the charges will be deemed admitted and the contest will be decided without a hearing. 43 CFR 4.450-7(a).

United States v. Edison T. Schaefer, 29 IBLA 84 (Feb. 23, 1977)

Where an Administrative Law Judge's decision contains a ruling, in a single sentence, on all of the proposed findings and conclusions submitted by a party to a hearing and the ruling on each finding and conclusion is clear, there is no requirement that the Judge rule separately as to each of the proposed findings and conclusions.

United States v. Leslie Harling and William Harling, 32 IBLA 29 (Aug. 31, 1977)

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE PROCEDURE ACT--Continued

Administrative hearings required in grazing trespass cases are not an unlawful exercise of judicial power and meet constitutional requirements and the standards of the Administrative Procedure Act. The constitutional requirement of due process is not violated merely because an Administrative Law Judge is employed by the Department of the Interior.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

ADMINISTRATIVE REVIEW

Bureau of Land Management Instruction Memorandum No. 77-37 outlined a general policy for the assessment of additional rental on oil and gas lease offers pending when the rental rate was increased by regulation, but left to the discretion of the State Offices the particular implementing procedures. Procedures used by a State Office which may be different from other State Offices, but which do not prejudice the offerors' right to receive oil and gas leases if leases are issued on the lands applied for, are not arbitrary and capricious as to require reversal of the decisions assessing additional rental.

D. R. Gaither, et al., 32 IBLA 106 (Sept. 12, 1977)

Where the Bureau of Land Management issued a decision notifying a successful lease offeror of the increased advanced rental rate from $.50 to $1 per acre as per the regulation change in 43 CFR 3103.3-2, effective Feb. 1, 1977, and no right of appeal was granted from that decision, the offeror was not bound to appeal from that decision in order to preserve his priority status. When the offeror took an appeal from a subsequent decision rejecting the offer, that appeal suspended the effect of both BLM decisions pending the result of the appeal before this Board and upon our affirmation, appellant now will be given 15 days to comply with the original requirements before his offer is rejected.

Paul Landis, 32 IBLA 374 (Oct. 31, 1977)

Where the Bureau of Land Management issued a decision notifying a successful drawee in the simultaneous oil and gas filing program of the increased advance rental rate from 50 cents to $1 per acre pursuant to a regulation change effective Feb. 1, 1977, 43 CFR 3103.3-2, and no right of appeal was granted from that decision, the offeror was not bound to appeal from that decision in order to preserve his priority status. When the offeror took an appeal from a subsequent decision rejecting the offer, that appeal suspended the effect of both BLM decisions pending the result of the appeal before this Board. Payment of the required increased rental during the appeal period is deemed timely and a lease may issue.

George Gabriel, 33 IBLA 44 (Nov. 25, 1977)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF

One challenging the accuracy of an appraisal of water based on fair-market value must show by substantial evidence the nature of the alleged error; where the appraisal has been conducted in accordance with generally accepted appraisal principles, allegations of error unsupported by evidence will be given little weight.

Park Center Water District and The Canon Heights Irrigation and Reservoir Co., 28 IBLA 368 (Feb. 3, 1977) 84 I.D. 87

When the Government has presented a prima facie case of lack of discovery of a valuable mineral deposit on a mining claim, the mining claimant then has the burden of establishing by a preponderance of the evidence that the discovery test has been met. Consequently, the ultimate burden of proving discovery is always upon the mining claimant.

United States v. George J. Hunt and A. M. Goodwin, 29 IBLA 86 (Feb. 23, 1977)

A lode mining claim for barite is properly declared null and void in the absence of a showing of a discovery on the claim of a deposit of barite which would warrant a prudent man in further expending his labor and means in the reasonable expectation of developing a valuable mine. Evidence of mineralization which may justify further exploration is not sufficient to establish that a discovery of a valuable mineral deposit has been made.

Once the Government has established in a mining claim contest a prima facie case that the claims are not valid for lack of discovery, the burden shifts to the contestee to prove the discovery of a valuable mineral deposit by a preponderance of the evidence.

United States v. Howard S. McKenzie, 29 IBLA 270 (Mar. 28, 1977)

In a Government contest challenging the validity of mining claims located for a clay-type material, an adequate prima facie case is established where there are expert witness opinions that the deposit is only a common clay or shale and it cannot meet refractory standards. The contestees then must go forward with evidence to rebut the Government's case with a preponderance of the evidence.

United States v. Thomas J. Peck, et al., 29 IBLA 357 (Mar. 31, 1977) 84 I.D. 137

When the Government contests a mining claim on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; then the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

United States v. Fred and Eileen Garner, 30 IBLA 42 (Apr. 18, 1977)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

United States v. Richard B. Walls, 30 IBLA 333 (June 7, 1977)

Although the Government has assumed the burden of proof in mining claim contests of presenting a prima facie case of lack of discovery, once it has done so, the burden shifts to the claimant to prove by a preponderance of the evidence the discovery of a valuable mineral deposit. A prima facie case is established when a Government mineral examiner testifies that she examined the claim and could find no evidence showing the discovery of a valuable mineral deposit.

United States v. Gwendolyn McClurg, et al., 31 IBLA 8 (June 15, 1977)

Where the Government contests a mining claim, it has assumed only the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that his claim is valid. Where a Government mineral examiner testifies that he extensively examined the claims and workings thereon, and had assayed numerous samples taken from the claims but found no evidence of a valuable mineral deposit that would support a discovery, a prima facie case of lack of a mineral discovery has been made.

United States v. A. O. Bartell, 31 IBLA 47 (June 23, 1977)

In making a prima facie case of lack of discovery of a valuable mineral deposit, the Government has no duty to do the discovery work for the mining claimant. It is incumbent upon the claimant to keep his discovery points available for inspection. A prima facie case is established when a Government mineral examiner gives his expert opinion that he examined the claim and found insufficient values to support a finding of discovery.

United States v. Emma Elizabeth Conner, and Walter T. Nolte, as the Heirs of R. W. Speer, a Last Known Director of the Arlington Gold Mining Co. (Contestee), 31 IBLA 173 (July 5, 1977)

When the Government contests a mining claim on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

United States v. Leslie Harling and William Harling, 32 IBLA 29 (Aug. 31, 1977)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when such minerals were no longer subject to such location, the Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on each claim.

Where the expert witnesses called by the Government testify that prior to July 23, 1955, there was no profitable market for common variety minerals from the subject claims and that it would have been economic folly to undertake the development a mine thereon, a prima facie case of invalidity has been made. Thereafter, upon the failure of the claimant to prove the contrary by a preponderance of credible evidence, a determination that the claims are invalid is obligatory.

United States v. Frank and Wanita Melluzzo (Supp. on Judicial Remand), 32 IBLA 46 (Sept. 2, 1977)

In mining claim contests, the United States has assumed the burden of establishing a prima facie case that no discovery has been made on the mining claims by the contestee; the burden of proof then shifts to the contestee to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of each mining claim. Evidence which may justify further exploration is insufficient either to establish a discovery or to overcome a prima facie case of lack of discovery.

A prima facie case of lack of discovery of a valuable mineral deposit is established when a mineral examiner testifies for the United States that he examined each claim and could find no evidence showing the discovery of a valuable mineral deposit.

When a mineral examiner testifies for the United States that a discovery has not been made on a mining claim, his opinion must be based on a proper factual foundation. However, he is not required to perform discovery work, to explore or sample beyond a claimant's workings, or to excavate or rehabilitate any purportedly mineralized area which is concealed by overburden or is otherwise difficult of access. Under proper circumstances, the testimony of the mineral examiner may establish a prima facie case of lack of discovery even though he was not physically on each mining claim.

United States v. Robert A. Rukke (Registered Agent), Valumines, Inc., et al., 32 IBLA 155 (Sept. 12, 1977)

After holding a hearing pursuant to the Administrative Procedure Act, an Administrative Law Judge may properly find that a person has committed a grazing trespass if that finding is in accordance with and supported by reliable, probative, and substantial evidence. Because a grazing trespass proceeding is not a criminal proceeding, it need not be proved beyond a reasonable doubt that a particular individual committed the trespass.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

When the Government contests a mining claim on a charge of no discovery, it has by practice assumed the burden of going forward with sufficient evidence to establish a prima facie case; when it has done so, the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

United States (Contestant) v. Earl Frisco and Sandra S. Young (Contestees), 32 IBLA 248 (Sept. 21, 1977)

United States v. Beatrice Ann Johnson, 33 IBLA 121 (Dec. 19, 1977)

DECISIONS

After holding a hearing pursuant to the Administrative Procedure Act, an Administrative Law Judge may properly find that a person has committed a grazing trespass if that finding is in accordance with and supported by reliable, probative, and substantial evidence. Because a grazing trespass proceeding is not a criminal proceeding, it need not be proved beyond a reasonable doubt that a particular individual committed the trespass.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

Where, in Alaska, a settlement or occupancy claim is initiated by the filing of a location notice which is acceptable on its face at a time when the land is open to the establishment of such a claim, the notice of location is acceptable for recordation by the BLM. But whether the BLM chooses to record the location notice is totally immaterial to a consideration of the validity of the claim, and BLM decisions purporting to adjudicate the validity of any such claim should address that issue on its merits rather than the acceptability of the notice for recordation.

John D. Ketscher, Alfred L. DeCicco, 32 IBLA 235 (Sept. 21, 1977)

A mining claim will be declared null and void where the Board's de novo review of the evidence submitted at a hearing, held in accordance with the provisions of the Administrative Procedure Act and presided over by an Administrative Law Judge qualified under the Act, establishes that the claimant has not satisfied the requirements of discovery, and there was no error in the conduct of the proceeding.

United States v. Ernest F. Diven and Richard J. T. Anderson, 32 IBLA 361 (Oct. 25, 1977)

Where a decision calls upon an applicant to supply certain documents and make certain showings in support of its mineral patent application or face rejection of the application, and on appeal it is established that all of the documents and evidence called for had already been furnished by the applicant and incorporated

ADMINISTRATIVE PROCEDURE--Continued

DECISIONS--Continued

in the case record, where they were apparently overlooked by those who examined the application, the decision will be reversed.

Alaska Placer Co., 33 IBLA 187 (Dec. 21, 1977)
84 I.D. 990

HEARINGS

Under the Department of the Interior's rules governing contests against mining claims, where an answer to a complaint is not filed within the prescribed time the allegations of the complaint will be taken as admitted by the contestee and the case decided without a hearing by the appropriate officer of the Bureau of Land Management. A mining claim may be declared null and void where there was a charge in the complaint of insufficient minerals to constitute a valid discovery.

United States v. William C. Smith, a/k/a Bill Smith, 29 IBLA 7 (Feb. 8, 1977)

Under the Department of the Interior's rules governing contests against mining claims, where an answer to a complaint is not filed within the prescribed time the allegations of the complaint will be taken as admitted by the contestee and the case decided without a hearing by the appropriate officer of the Bureau of Land Management. However, under the rules an answer may be accepted if it is received within 10 days after the due date and it is determined that the answer was probably transmitted before the end of the period in which it was required to be filed.

United States v. Jesse Smith, 29 IBLA 10 (Feb. 8, 1977)

The Government has established a prima facie case when a mineral examiner testifies that he has examined a mining claim and has found the mineral values insufficient to support a finding of discovery.

United States v. Fred and Eileen Garner, 30 IBLA 42 (Apr. 18, 1977)

United States v. Richard B. Walls, 30 IBLA 333 (June 7, 1977)

United States (Contestant) v. Earl Frisco and Sandra S. Young (Contestees), 32 IBLA 248 (Sept. 21, 1977)

United States v. Ernest F. Diven and Richard J. T. Anderson, 32 IBLA 361 (Oct. 25, 1977)

United States v. Beatrice Ann Johnson, 33 IBLA 121 (Dec. 19, 1977)

A mining claim located on land withdrawn from location under the mining laws is null and void ab initio--without legal effect from the beginning. Such a mining claim may properly be declared null and void without a hearing where the records of the Department of the

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

Interior show that the land was withdrawn at the time the claim was located.

Charles R. Nielsen, Pauline Nielsen, 30 IBLA 235 (May 26, 1977)

Evidence offered on appeal from an initial decision by an Administrative Law Judge after a hearing in a contest may not be considered or relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

David A. Burns, 30 IBLA 359 (June 10, 1977)

Government witnesses in a contest proceeding who are qualified by education and experience are competent to testify as experts with reference to the prudent man rule.

United States v. A. O. Bartell, 31 IBLA 47 (June 23, 1977)

In a proceeding before the Department to determine the validity of a mining claim, notice and an opportunity for an evidentiary hearing is required only where there is a disputed question of fact; where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

David Budinski, et al., 31 IBLA 139 (June 30, 1977)

While a mining location on land totally withdrawn may be declared null and void ab initio without hearing, if a claimant alleges facts which would establish an interest in a claim located prior to the withdrawal, the claim may not be declared null and void ab initio without notice and an opportunity for hearing.

Cajen Minerals, Inc., 31 IBLA 188 (July 5, 1977)

The Government has established a prima facie case when a mineral examiner testifies that he has examined a mining claim and has found the mineral values insufficient to support a finding of discovery.

Where an Administrative Law Judge's decision contains a ruling, in a single sentence, on all of the proposed findings and conclusions submitted by a party to a hearing and the ruling on each finding and conclusion is clear, there is no requirement that the Judge rule separately as to each of the proposed findings and conclusions.

United States v. Leslie Harling and William Harling, 32 IBLA 29 (Aug. 31, 1977)

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

The rule of evidence excluding hearsay is not strictly adhered to in administrative proceedings, particularly where the evidence, such as assay reports with a proper foundation concerning the sampling, submission of the samples for assaying, and the reputation of the assayer, is competent and relevant. After such reports are admitted, the factfinder may give them appropriate weight according to the circumstances surrounding the specific report.

United States v. Robert A. Rukke (Registered Agent), Valumines, Inc., et al., 32 IBLA 155 (Sept. 12, 1977)

After holding a hearing pursuant to the Administrative Procedure Act, an Administrative Law Judge may properly find that a person has committed a grazing trespass if that finding is in accordance with and supported by reliable, probative, and substantial evidence. Because a grazing trespass proceeding is not a criminal proceeding, it need not be proved beyond a reasonable doubt that a particular individual committed the trespass.

There is no constitutional right to a jury trial in an administrative proceeding such as a grazing trespass hearing.

Administrative hearings reguired in grazing trespass cases are not an unlawful exercise of judicial power and meet constitutional reguirements and the standards of the Administrative Procedure Act. The constitutional reguirement of due process is not violated merely because an Administrative Law Judge is employed by the Department of the Interior.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

When a mining claim located in the Papago Indian Reservation is declared invalid for failure to pay annual rental timely, and that fact is not disputed, a hearing is not reguired as there are no issues of fact involved but only of law.

Louis B. Ellsworth, Jr., 33 IBLA 26 (Nov. 22, 1977)

RULE MAKING

The promulgation or revocation of a regulation is within the special authority of the Secretary of the Interior and a limited number of delegates. A regulation when promulgated is binding upon departmental officials.

The reguirement in the Administrative Procedure Act, 5 U.S.C. § 553(d) (1970), that the reguired publication of a substantive rule be made not less than 30 days before its effective date is satisfied by publication of proposed rulemaking with a 30-day comment period, followed thereafter by final rulemaking. Minor changes in a final rule from the proposed rule do not require new proposed rulemaking.

Assuming, arguendo, the applicability of the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. § 553 (1970), to an amendment of 43 CFR 3102.3-2 increasing the rental rate of noncompetitive oil and gas leases, the provisions of the Act were satisfied where

ADMINISTRATIVE PROCEDURE--Continued

RULE MAKING--Continued

the proposed increase was published as proposed rulemaking on Mar. 18, 1976, to be effective July 1, 1976, and final rulemaking was published Jan. 5, 1977, changing the effective date of the rental increase to Feb. 1, 1977.

D. R. Gaither, et al., 32 IBLA 106 (Sept. 12, 1977)

STANDING

Holders of grazing permits under sec. 3 of the Taylor Grazing Act whose permits give them grazing rights for public lands which are subseguently traversed by a power line right-of-way grant have standing to appeal the decision granting the right-of-way.

David Smith Ranches, et al. (Appellants), Colorado Ute Electric Assoc., Inc. (Intervenor), 33 IBLA 7 (Nov. 15, 1977)

SUBSTANTIAL EVIDENCE

In a contest of a patent application for a lode mining claim, the Board of Land Appeals may remand the case for further hearing to complete the record regarding the (1) availability and expense of necessary financing, land and water, (2) the expense of labor, and (3) the expense of compliance with environmental protection laws.

United States v. Pittsburgh Pacific Co., 30 IBLA 388 (June 15, 1977) 84 I.D. 282

After holding a hearing pursuant to the Administrative Procedure Act, an Administrative Law Judge may properly find that a person has committed a grazing trespass if that finding is in accordance with and supported by reliable, probative, and substantial evidence. Because a grazing trespass proceeding is not a criminal proceeding, it need not be proved beyond a reasonable doubt that a particular individual committed the trespass.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

A party seeking a partial refund of the purchase price under the risk of loss provision of a contract for the cash sale of vegetative resources pursuant to the Materials Act of July 31, 1947, must present substantial evidence of the guantity of resources lost which otherwise would have been harvested.

Alma D. LeBaron, Jr., 32 IBLA 299 (Sept. 29, 1977)

ALASKA

GRAZING

Whether or not a lease issued under the Alaska Grazing Act, 43 U.S.C. § 316 et seq. (1970), was properly issued, the land in such a lease is segregated from settlement, location or entry, including the acquisition of rights under the Alaska Native Allotment Act, 43 U.S.C. § 270-1 et seq. (1970), until the lease is canceled of record pro tanto.

Myrtle M. Jensen Shanigan, 29 IBLA 255 (Mar. 25, 1977)

HEADQUARTERS SITES

An applicant to purchase either a trade and manufacturing site or a headquarters site has the burden of proving that he has complied with the requirements of the law, 43 U.S.C. § 687a (1970). Rejection of such an application is proper where the evidence shows that the tract was used (1) for trapping by the applicant to repay a neighbor for assistance in improving the site, and (2) as a wilderness camp area, and that no substantial revenue was derived from the trapping, and nominal revenues were derived from camping tourists in the park during the life of the claim.

Where an applicant to purchase a trade and manufacturing site or a headquarters site states he was frustrated in completing his improvements and showing sufficient use of the land as required by the law because of more difficult or complex problems than anticipated, but has not shown that this operation could reasonably be expected to be successful, such problems will not afford any basis for equitable adjudication of his application to purchase.

United States v. Ronald B. Tippetts, 29 IBLA 348 (Mar. 31, 1977)

A headquarters site applicant has the burden of establishing entitlement to the land by showing compliance with the law. 43 U.S.C. § 687a (1970). Where such an applicant asserts that he operates a trapping business from the site, yet fails to produce sufficient evidence to show that he was engaged in trade, manufacture or other productive industry from which he reasonably hoped to derive a profit, the application to purchase must be rejected.

United States v. Charles Thomas Beaird, 31 IBLA 203 (July 6, 1977)

The filing of a notice of location for a headquarters site or a homesite does not create any rights in the land, and the filing of a notice will not prevent a withdrawal from attaching to the land if, prior to the effective date of the withdrawal, the locator fails to perform the requisite acts of use, occupancy and development necessary to establish a valid existing right in the claim. Marking of boundaries of the claim does not constitute use and development.

Where, in Alaska, a settlement or occupancy claim is initiated by the filing of a location notice which is acceptable on its face at a time when the land is open to the establishment of such a claim, the notice of location is acceptable for recordation by the BLM. But whether the BLM chooses to record the location notice

HEADQUARTERS SITES--Continued

is totally immaterial to a consideration of the validity of the claim, and BLM decisions purporting to adjudicate the validity of any such claim should address that issue on its merits rather than the acceptability of the notice for recordation.

John D. Ketscher, Alfred L. DeCicco, 32 IBLA 235 (Sept. 21, 1977)

HOMESITES

It is improper for a District Office to find a notice of location for a homesite unacceptable for recordation when the location notice is regular on its face and the land was open to location at the time the notice was filed.

The filing of a notice of location for a homesite does not create any rights in the land, and the filing of a notice will not prevent a withdrawal from attaching to the land if, prior to the effective date of the withdrawal, the locator fails to perform the requisite acts of use, occupancy and development necessary to establish a valid existing right in the claim. Marking of boundaries of the claim does not constitute use and development.

George T. Beck, 31 IBLA 363 (July 28, 1977)

The filing of a notice of location for a headquarters site or a homesite does not create any rights in the land, and the filing of a notice will not prevent a withdrawal from attaching to the land if, prior to the effective date of the withdrawal, the locator fails to perform the requisite acts of use, occupancy and development necessary to establish a valid existing right in the claim. Marking of boundaries of the claim does not constitute use and development.

Where, in Alaska, a settlement or occupancy claim is initiated by the filing of a location notice which is acceptable on its face at a time when the land is open to the establishment of such a claim, the notice of location is acceptable for recordation by the BLM. But whether the BLM chooses to record the location notice is totally immaterial to a consideration of the validity of the claim, and BLM decisions purporting to adjudicate the validity of any such claim should address that issue on its merits rather than the acceptability of the notice for recordation.

John D. Ketscher, Alfred L. DeCicco, 32 IBLA 235 (Sept. 21, 1977)

HOMESTEADS

To establish residency on a homestead there must be the intent to make the desired public lands the entryman's home, and also the intent to no longer have a home at the former residence; the law permits an entryman to have two residences, but he may have only one home.

An entryman who, at the time he seeks to establish residence on the entry, owns a house which he leases furnished for 6 and 1/2 months and to which he returns a few days after he has completed the required 7 months on the entry did not establish his home on the entry

ALASKA--Continued

HOMESTEADS--Continued

in good faith, and thus has not met the residence requirement of the homestead law.

A homestead entry made with no intention of establishing a permanent bona fide home on the entry, but merely with a view to submitting a showing sufficient to support occupancy for the briefest time permitted under the law must be canceled, notwithstanding the proof offered shows full technical compliance with respect to inhabitancy of the land for the period required by the law.

Cultivation of a homestead entry must include the breaking, planting or seeding and tillage for a crop and be done in such a manner as to be reasonably calculated to produce profitable results.

The acts performed in attempted satisfaction of the cultivation requirements of the homestead law must be done in good faith seeking to establish a profitable agricultural operation on the entry.

An entryman who performs the minimum acts of cultivation, and seeds late in the last growing season and soon thereafter files final proof, who does not visit the entry to see the results of his attempts or pursue any further agricultural activity on the entry, and who does not establish that he had a market or use for the crop he could have grown, and where the results are meager, has not demonstrated that he made a good faith attempt to comply with the agricultural requirements of the homestead act.

United States v. Leonard F. Nelson (Supp. I, 28 IBLA 314 (Jan. 14, 1977)

Where a homestead entryman has cleared and broken ground and allowed a portion of the cleared, plowed acreage to grow up with a species of native wheat grass, such acreage is not "cultivated" within the meaning of 43 CFR 2567.5(b), and the entryman's final proof is properly rejected where it shows on its face that the native grass acreage constituted an indispensable portion of the entryman's attempt at meeting the cultivation requirements of the homestead laws. Since there was not substantial compliance with the cultivation requirements, equitable adjudication cannot be properly invoked.

Clarence Ray Mathis, 29 IBLA 150 (Mar. 4, 1977)

A request to reconsider a 1968 decision by the Department rejecting final proof for a homestead entry and canceling the entry is properly rejected in the absence of a showing of "extraordinary circumstances." In the absence of compelling legal or equitable reasons for reconsideration, the principle of res judicata, and its counterpart, finality of administrative action, will operate to bar consideration of a new appeal arising from a later proceeding involving the same claim and the same issues.

Where a homestead entry has been located on land later included within a withdrawal "subject to valid existing rights," the withdrawal attaches to the land within the homestead upon cancellation of the entry. An amendment

ALASKA--Continued

HOMESTEADS--Continued

of a homestead entry cannot include lands within a canceled adjoining entry to which a withdrawal has attached.

Pekka K. Merikallio, 30 IBLA 157 (May 18, 1977)

Where the initial actions of a homesteader are inconsistent in that he appears to initiate his claim both by settlement and by application for allowed entry, the nature of his claim will be determined by the type of official form used by him to initiate the claim, and by his actions with regard thereto.

Where a homestead in Alaska is initiated by an application for allowed entry, the filing of the application creates a valid existing right which is protected from the effect of a subsequent withdrawal which is subject to valid existing rights.

Where a homestead in Alaska is initiated by an application to enter, the statutory period for compliance with the requirements of the homestead laws begins to run on the date of allowance of the entry.

A contest complaint is properly dismissed where the only basis for cancellation of the homestead suggested by it is failure to comply with the residence and cultivation requirements of the homestead law, and where the time for compliance with these requirements by the entryman has not yet begun.

John Anthony Consla v. Robert L. Wetherelt, 30 IBLA 311 (June 6, 1977)

Where a notice of location of settlement claim is filed covering land which is not available for entry, the notice must be rejected and cannot be suspended to await the possible restoration of the land to entry.

A powersite classification effects withdrawal of lands to the full extent described therein as of publication in the Federal Register, even if the extent of the land withdrawn by it is not accurately entered subsequently on land-status maps, and, notwithstanding this error, lands classified by it are withdrawn under sec. 24 of the Federal Power Act from settlement under the homestead laws, so that a notice of location settlement claim and final proof concerning these lands is properly rejected.

By regulation, final proof of compliance with the homestead laws must be filed within 5 years, failing which the homestead is subject to cancellation, although, in proper cases the time for filing final proof may be extended. However, the statutory life of a homestead claim or entry cannot be extended beyond 5 years, during which time all other requirements must be performed. An extension of the time for filing final proof is not an extension of the time for performing acts of compliance.

A homestead claimant who contracts for the planting of "enough acreage to satisfy the homestead law" in an essentially worthless hay crop in an area of Alaska where there are no livestock, and with no intention to harvest or utilize it even though it successfully matured, has performed only a token compliance which is, prima facie, demonstrative of bad faith. A good faith

ALASKA--Continued

HOMESTEADS--Continued

devotion of the land to productive and profitable agricultural use is essential to satisfy the purpose and intent of the agricultural land entry laws.

Henry E. Reeves, 31 IBLA 242 (July 18, 1977)

Where, in Alaska, a settlement or occupancy claim is initiated by the filing of a location notice which is acceptable on its face at a time when the land is open to the establishment of such a claim, the notice of location is acceptable for recordation by the BLM. But whether the BLM chooses to record the location notice is totally immaterial to a consideration of the validity of the claim, and BLM decisions purporting to adjudicate the validity of any such claim should address that issue on its merits rather than the acceptability of the notice for recordation.

John D. Ketscher, Alfred L. DeCicco, 32 IBLA 235 (Sept. 21, 1977)

LAND GRANTS AND SELECTIONS

Generally

Lands described in a State selection application under sec. 6(b) of the Alaska Statehood Act are segregated from all forms of appropriation including location under the mining laws from the time the application is filed in the proper office of the BLM. An amendment to a pre-existing application is effective to segregate the land described in the amendment from the time it is filed.

Dennis G. Quinn, 29 IBLA 307 (Mar. 30, 1977)

NATIVE ALLOTMENTS

The filing of an option form by an Alaska Native to receive his "primary place of residence" pursuant to sec. 14(h)(5) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1613(h)(5) (Supp. III, 1973), does not terminate a prior allotment application filed under the Native Allotment Act, 43 U.S.C. § 270-1 (1970). Allowance of an application under either act renders the applicant ineligible for allowance of the other application.

Dwight Tevuk, Deceased (On Reconsideration), 29 IBLA 160 (Mar. 9, 1977)

An allotment application must be rejected where the Native has not completed a 5-year period of substantial use and occupancy prior to the withdrawal of the land. The substantial use and occupancy required must be achieved by the Native as an independent citizen for himself (or as head of a family), at least potentially exclusive of others, and not as a minor, dependent child occupying or using the land in the company of his parents or ancestors.

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

An allotment right is personal to one who has fully complied with the law and the regulations and an applicant for a Native allotment may not tack on ancestral use and occupancy of the land to establish the right.

A request for a hearing on a Native allotment application will be denied where an evidentiary hearing is not necessary because there are no facts in dispute and the sole question is a legal issue.

Mable Melovedoff, 29 IBLA 250 (Mar. 25, 1977)

An Alaska Native allotment applicant may not use the occupancy of public land by forebears to qualify herself for an allotment, nor does the use and occupancy of public land by a forebear, while the land was open to settlement, create any right that excepts the land from a withdrawal in favor of an applicant who initiated independent use and occupancy subsequent to the withdrawal.

Whether or not a lease issued under the Alaska Grazing Act, 43 U.S.C. § 316 et seq. (1970), was properly issued, the land in such a lease is segregated from settlement, location or entry, including the acquisition of rights under the Alaska Native Allotment Act, 43 U.S.C. § 270-1 et seq. (1970), until the lease is canceled of record pro tanto.

Myrtle M. Jensen Shanigan, 29 IBLA 255 (Mar. 25, 1977)

Where an Alaska Native has timely filed an allotment application pursuant to the Act of May 17, 1906 (34 Stat. 197, as amended), asserting that his use and occupancy of the land was initiated prior to the withdrawal imposed on Jan. 17, 1969, by PLO 4582, neither the imposition of that withdrawal nor the subsequent repeal of the 1906 Act will interdict his continuing lawful occupancy or preclude him from thereafter completing the required 5 years of substantially continuous use and occupancy.

Warner Bergman (On Reconsideration), 31 IBLA 21 (June 20, 1977)

TRADE AND MANUFACTURING SITES

A trade and manufacturing site application is properly rejected when there is only a cabin on the site, roads and clearing for a campground and the land has been used intermittently for campsite rentals, only a few people used the campsites during the life of the claim, and any revenues which were derived or could have been derived from use of the site as a campground would not be such as to engender the belief that appellant was engaged in a productive industry or that he hopes to garner a profit from operation of a business.

United States v. Jerry L. Crow, 28 IBLA 345 (Jan. 24, 1977)

ALASKA--Continued

TRADE AND MANUFACTURING SITES--Continued

A trade and manufacturing site applicant, who alleges that the activities on his trade and manufacturing site were undertaken in conjunction with his primary business which is headquartered at another location, bears the burden of establishing a direct and economic purpose for his trade and manufacturing site in connection with his entire business operation.

A field examination report of a trade and manufacturing site claim is not evidence on which the final action of cancellation may be taken, until such time as the pertinent facts are admitted by the applicant or the report is admitted into evidence at a hearing initiated by a contest complaint.

John B. Coghill, 29 IBLA 177 (Mar. 18, 1977)

An applicant to purchase either a trade and manufacturing site or a headquarters site has the burden of proving that he has complied with the requirements of the law, 43 U.S.C. § 687a (1970). Rejection of such an application is proper where the evidence shows that the tract was used (1) for trapping by the applicant to repay a neighbor for assistance in improving the site, and (2) as a wilderness camp area, and that no substantial revenue was derived from the trapping, and nominal revenues were derived from camping tourists in the park during the life of the claim.

Where an applicant to purchase a trade and manufacturing site or a headquarters site states he was frustrated in completing his improvements and showing sufficient use of the land as required by the law because of more difficult or complex problems than anticipated, but has not shown that this operation could reasonably be expected to be successful, such problems will not afford any basis for equitable adjudication of his application to purchase.

United States v. Ronald B. Tippetts, 29 IBLA 348 (Mar. 31, 1977)

When an applicant for an 80-acre trade and manufacturing site has demonstrated that he has used a substantial portion of that 80-acre parcel for the activity of motorcycle and snow machine testing in connection with his business of motorcycle and snow machine sales located some distance away in Anchorage, Alaska, and that parcel contains substantial improvements made in connection with this testing activity, and he has satisfactorily shown a need for and a direct and necessary economic purpose in furthering his enterprise, the applicant has successfully satisfied the requirements for this trade and manufacturing site.

Where an applicant seeks 80 acres for a trade and manufacturing site, he can only obtain title to as much land in the claim as is actually occupied by improvements and used in his business. Each portion of the site need not contain substantial improvements. It is sufficient to meet the requirements of the law if the applicant can show active use of the unimproved land as an integral part of his business.

David A. Burns, 30 IBLA 359 (June 10, 1977)

ALASKA--Continued

TRADE AND MANUFACTURING SITES--Continued

Where, in Alaska, a settlement or occupancy claim is initiated by the filing of a location notice which is acceptable on its face at a time when the land is open to the establishment of such a claim, the notice of location is acceptable for recordation by the BLM. But whether the BLM chooses to record the location notice is totally immaterial to a consideration of the validity of the claim, and BLM decisions purporting to adjudicate the validity of any such claim should address that issue on its merits rather than the acceptability of the notice for recordation.

John D. Ketscher, Alfred L. DeCicco, 32 IBLA 235 (Sept. 21, 1977)

ALASKA NATIVE CLAIMS SETTLEMENT ACT

GENERALLY

Lands withdrawn for the protection of Alaska Natives' selection rights are not available for oil and gas leasing under the Mineral Leasing Act. 43 U.S.C. § 1621(i) (Supp. III. 1973).

A pending noncompetitive oil and gas lease offer is not a valid existing right protected by the savings clause in the Alaska Native Claims Settlement Act.

James W. Canon, et al., 1 SEC. 1 (Apr. 15, 1977) 84 I.D. 176

Provision in sec. 4(b) of the Alaska Native Claims Settlement Act requiring the Secretary to issue patents to all persons who have made a lawful entry on the public lands in compliance with the public land laws for the purpose of gaining title to homesteads, prior to Aug. 31, 1971, does not apply to an invalid settlement claim on withdrawn land.

Henry E. Reeves, 31 IBLA 242 (July 18, 1977)

The Alaska Native Claims Appeal Board, in its discretion, will not rule on issues raised on appeal which were not the grounds cited by the Bureau of Land Management for rejection of applicant's application and which are not dispositive of the issue on appeal.

Appeal of William Thomas Woolard, 2 ANCAB 150 (Nov. 3, 1977) 84 I.D. 891

The Alaska Native Claims Appeal Board cannot ignore existing and related laws and decisions whether raised by the parties or not when the same are dispositive of the appeal itself.

Appeal of Ketchikan Indian Corp., 2 ANCAB 169 (Nov. 8, 1977)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

GENERALLY--Continued

The determination that a Village Corporation is eligible under sec. 11 of ANCSA is a finding that such village had at least a minimum Native population of 25 on the 1970 census enumeration date and thus entitles such village to at least the minimum acreage allocation pursuant to sec. 14(a) of ANCSA.

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 2 ANCAB 183 (Dec. 19, 1977)

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 2 ANCAB 187 (Dec. 19, 1977)

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 2 ANCAB 191 (Dec. 19, 1977)

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 2 ANCAB 195 (Dec. 19, 1977)

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 2 ANCAB 199 (Dec. 19, 1977)

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 2 ANCAB 203 (Dec. 19, 1977)

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 2 ANCAB 207 (Dec. 19, 1977)

Appeal of U.S. Fish and Wildlife Services, 2 ANCAB 223 (Dec. 20, 1977)

Appeal of U.S. Fish and Wildlife Services, 2 ANCAB 227 (Dec. 20, 1977)

Appeal of U.S. Fish and Wildlife Services, 2 ANCAB 231 (Dec. 20, 1977)

Appeal of U.S. Fish and Wildlife Services, 2 ANCAB 235 (Dec. 20, 1977)

Appeal of U.S. Fish and Wildlife Services, 2 ANCAB 239 (Dec. 20, 1977)

Appeal of U.S. Fish and Wildlife Services, 2 ANCAB 243 (Dec. 20, 1977)

ABORIGINAL CLAIMS

Until Congress acted to extinguish rights of Alaskan Natives to use and occupancy of aboriginal lands, such rights remained as an encumbrance on the fee, and title to land claimed by Alaska Natives, to which use and occupancy might be proved, was void when given.

The retroactive extinguishment of aboriginal title, and the resulting validation of State title, mandated by sec. 4(a) of ANCSA, applies to those lands tentatively approved to the State which are located outside Native village withdrawal areas.

Extinguishment of aboriginal title did not vest the State's title to those TA'd lands located within sec. 11(a)(2) withdrawal areas, for Congress clearly conferred on Native Village Corporations a superior right to select up to 69,120 acres of such lands.

Appeals of the State of Alaska and Seldovia Native Assoc., Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ADMINISTRATIVE PROCEDURE

Generally

Absent another party aligned in interest with the appellant or other reasons justifying continuance of the appeal, an appeal will be dismissed when the sole appellant before the Board withdraws its appeal.

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 1 ANCAB 317 (Apr. 8, 1977)

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 1 ANCAB 322 (Apr. 8, 1977)

Appeal of State of Alaska, 1 ANCAB 327 (Apr. 15, 1977)

Appeal of NANA Regional Corp., Inc., 1 ANCAB 334 (Apr. 15, 1977)

Appeal of U.S. Fish and Wildlife Service, 1 ANCAB 341 (Apr. 28, 1977)

Appeal of State of Alaska, 1 ANCAB 345 (May 4, 1977)

Appeal of State of Alaska, 1 ANCAB 348 (May 4, 1977)

Appeal of State of Alaska, 1 ANCAB 351 (May 4, 1977)

Appeal of State of Alaska, 1 ANCAB 354 (May 4, 1977)

Since ANCSA recognizes and protects State-created interests as valid existing rights, as well as interests recognized or created under Federal law, and thus involves interests which would not be of record in the BLM land office, BLM's administrative responsibility to identify, adjudicate and protect "valid existing rights" under ANCSA, are broader than under general Federal public land laws.

Appeals of the State of Alaska and Seldovia Native Assoc., Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

Where the Secretary pursuant to regulations in 43 CFR 4.5 takes original jurisdiction of a case and renders the final decision in the matter, the Board is bound by his findings, conclusions, and statements of Departmental policy in such decision.

Where BLM, in accord with Secretarial policy, rejects a noncompetitive oil and gas lease offer because of a conflict with a conveyance under ANCSA, such rejection by BLM constitutes final agency action from which no administrative appeal will lie by the offeror to the Board or to the Interior Board of Land Appeals.

Appeal of E. H. Wargo, 2 ANCAB 98 (July 15, 1977)

Appeal of William G. Zaegel, 2 ANCAB 115 (July 15, 1977)

Appeal of Terry E. Krize and J. Burglin, 2 ANCAB 126 (Aug. 4, 1977)

Appeal of Clifford C. Burglin, 2 ANCAB 134 (Aug. 4, 1977)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ADMINISTRATIVE PROCEDURE--Continued

Generally--Continued

Absent another party aligned in interest with the appellants or other reasons justifying continuance of the appeal, an appeal will be dismissed when the appellants before the Board withdraw their appeal.

Appeal of Kodiak Island Borough and the City of Kodiak, 2 ANCAB 123 (July 25, 1977)

Appeal of Choggiung, Ltd., 2 ANCAB 181 (Dec. 16, 1977)

The Alaska Native Claims Appeal Board and the Bureau of Land Management are bound by the rules and regulations enacted by the Department of the Interior.

Appeal of William Thomas Woolard, 2 ANCAB 150 (Nov. 3, 1977) 84 I.D. 891

Where the Secretary, pursuant to regulations in 43 CFR 4.5, takes original jurisdiction of a case and renders a final decision, the Board is bound by his findings, conclusions, and statements of Departmental policy.

The Secretary's policy against appealing the rejection of oil and gas lease offers to the Interior Board of Land Appeals separately from an appeal of the decision to issue conveyance, confers on the Alaska Native Claims Appeal Board exclusive jurisdiction over decisions rejecting noncompetitive oil and gas lease offers because of conflicts with land selections by Native Corporations under ANCSA.

The Board vacates its previous ruling that BLM's rejection of a noncompetitive oil and gas lease offer, because of conflict with an ANCSA conveyance, constitutes final agency action from which no appeal will lie.

Appeal of Terry E. Krize and J. Burglin, 2 ANCAB 247 (Dec. 28, 1977) 84 I.D. 1007

Applications

Primary Place of Residence

Under sec. 14(h)(5) of ANCSA and 43 CFR Part 2653, an applicant who desired to file an application for the conveyance of a primary place of residence was required to do so by Dec. 18, 1973, regardless of the status of the land at the date of filing.

Neither the Act nor regulations permit an applicant for a primary place of residence to refile an application for a primary place of residence once a sec. 11 withdrawal terminates and the land becomes available for selection as a primary place of residence.

Appeal of William Thomas Woolard, 2 ANCAB 150 (Nov. 3, 1977) 84 I.D. 891

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ADMINISTRATIVE PROCEDURE--Continued

Decisions

Where Departmental regulations provide for the elapse of a 30-day appeal period before a decision to convey becomes final, waiver by one of a number of parties who might appeal does not render BLM's decision final so as to permit conveyance before elapse of the 30-day appeal period.

While decisions of the Bureau of Land Management and documents conveying title to Native corporations pursuant to ANCSA properly contain a general provision protecting "valid existing rights" in accordance with the provisions of sec. 14(g) of ANCSA and the regulations in 43 CFR 2650, such documents must additionally describe valid existing rights according to the nature of the right and approximate location on the land, and may incorporate by reference other BLM files and files of the Alaska Division of Lands only as a supplemental source of information.

Under ANCSA and the regulations in 43 CFR 2650, the Bureau of Land Management has the duty to ascertain whether a less-than-fee interest was issued to a third party, and must recite in the decision approving lands for conveyance to a Native Corporation that the conveyance is "subject to" such an interest.

Where the claimed "valid existing rights" were created by the State on lands tentatively approved to the State under the Statehood Act, the adjudication of the State's selection must be consolidated with the adjudication of the Native land selection, and valid existing rights in the land must be determined in a single decision.

Both the decision to convey lands, and the interim conveyance, must specifically identify those interests protected under ANCSA as valid existing rights. Where the title conveyed will be "subject to" a less-than-fee interest, the nature of the interest must be identified and the lands affected must be described, at least by section and, where possible, according to the smallest legal subdivision.

Decisions to convey and interim conveyances should, as a minimum, state the use for which each easement is reserved, state the width of each easement, state at least the sections through which an easement passes or, if a site easement, the section or sections in which the easement is located; alternatively, the easement could be located by incorporating in the conveyance document a map depicting the easement.

Where the Bureau of Land Management has developed new procedures for the reservation and identification of easements subsequent to issuance of a Decision to Convey, the Board will remand the Decision to Convey to the Bureau of Land Management for the limited purpose of identifying the easements reserved in the Decision to Convey under appeal according to the uniform easement identification system currently being followed.

Appeals of the State of Alaska and Seldovia Native Assoc., Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ADMINISTRATIVE PROCEDURE--Continued

Decisions--Continued

Where Departmental policy is to expedite conveyances under ANCSA by rejecting noncompetitive oil and gas leases which conflict with conveyances under ANCSA, and the Secretary has announced that oil and gas leases will not be issued as a consequence of administrative appeals, the Board interprets this policy as a mandate to affirm a BLM decision rejecting a noncompetitive oil and gas lease offer because of conflict with a conveyance under ANCSA.

The Board will accept appeals from decisions rejecting noncompetitive oil and gas lease offers based on conflicts with interim conveyances under ANCSA, but will dismiss such appeals after elapse of the 30-day period in which statements of reasons and standing may be filed.

Appeal of Terry E. Krize and J. Burglin, 2 ANCAB 247 (Dec. 28, 1977) 84 I.D. 1007

Interim Conveyance

Where Departmental regulations provide for the elapse of a 30-day appeal period before a decision to convey becomes final, waiver by one of a number of parties who might appeal does not render BLM's decision final so as to permit conveyance before elapse of the 30-day appeal period.

The interests described in sec. 14(g) of ANCSA are of a temporary or limited nature, in contrast to those interests derived from laws leading to a grant of fee title such as the entries protected by sec. 22(b). Inclusion in Native conveyances of lands subject to such interests, under administrative arrangements outlined in sec. 14(g) is appropriate, because such temporary or limited interests are not incompatible with Native ownership of the fee.

Leases issued for the surface or minerals covered by a Native selection constitute a valid existing right protected by sec. 14(g) of ANCSA and any conveyance to a Native Corporation of lands on which such a lease has issued must be subject to the leasehold interest.

State-issued permits and contracts for resource uses issued to third parties before Dec. 18, 1971, are protected as valid existing rights under sec. 14(g) of ANCSA, and any conveyance to a Native Corporation of lands on which such permits or contracts have been issued must be subject to such interests.

Under ANCSA and the regulations in 43 CFR 2650, the Bureau of Land Management has the duty to ascertain whether a less-than-fee interest was issued to a third party, and must recite in the decision approving lands for conveyance to a Native Corporation that the conveyance is "subject to" such an interest.

Both the decision to convey lands, and the interim conveyance, must specifically identify those interests protected under ANCSA as valid existing rights. Where the title conveyed will be "subject to" a less-than-fee interest, the nature of the interest must be identified and the lands affected must be described, at least by

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ADMINISTRATIVE PROCEDURE--Continued

Interim Conveyance--Continued

section and, where possible, according to the smallest legal subdivision.

Decisions to convey and interim conveyances should, as a minimum, state the use for which each easement is reserved, state the width of each easement, state at least the sections through which an easement passes or, if a site easement, the section or sections in which the easement is located; alternatively, the easement could be located by incorporating in the conveyance document a map depicting the easement.

Appeals of the State of Alaska and Seldovia Native Assoc., Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

ALASKA NATIVE CLAIMS APPEAL BOARD

Appeals

Generally

Where the Secretary pursuant to regulations in 43 CFR 4.5 takes original jurisdiction of a case and renders the final decision in the matter, the Board is bound by his findings, conclusions, and statements of Departmental policy in such decision.

Appeal of E. H. Wargo, 2 ANCAB 98 (July 15, 1977)

Appeal of William G. Zaegel, 2 ANCAB 115 (July 15, 1977)

Appeal of Terry E. Krize and J. Burglin, 2 ANCAB 126 (Aug. 4, 1977)

Appeal of Clifford C. Burglin, 2 ANCAB 134 (Aug. 4, 1977)

A regulation enacted to implement the sale of isolated tracts pursuant to 43 U.S.C. § 1171 which defined the term "cornering" for purposes of that Act and which was not enacted pursuant to ANCSA, is not binding upon this Board in interpreting the meaning of the phrase "cornering" pursuant to sec. 11(a) of ANCSA.

This Board will not reverse an administrative determination of the Bureau of Land Management that is a reasonable, consistently applied interpretation of the law, and on which many Village Corporations relied in making their land selections under ANCSA, even though it is not the only reasonable interpretation of the statute.

Appeal of Eklutna, Inc., 2 ANCAB 214 (Dec. 19, 1977) 84 I.D. 982

Where the Secretary, pursuant to regulations in 43 CFR 4.5, takes original jurisdiction of a case and renders a final decision, the Board is bound by his findings, conclusions, and statements of Departmental policy.

The Secretary's policy against appealing the rejection of oil and gas lease offers to the Interior Board of Land Appeals separately from an appeal of the decision to issue conveyance, confers on the Alaska Native

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Generally--Continued

Claims Appeal Board exclusive jurisdiction over decisions rejecting noncompetitive oil and gas lease offers because of conflicts with land selections by Native Corporations under ANCSA.

Where Departmental policy is to expedite conveyances under ANCSA by rejecting noncompetitive oil and gas leases which conflict with conveyances under ANCSA, and the Secretary has announced that oil and gas leases will not be issued as a consequence of administrative appeals, the Board interprets this policy as a mandate to affirm a BLM decision rejecting a noncompetitive oil and gas lease offer because of conflict with a conveyance under ANCSA.

Appeal of Terry E. Krize and J. Burglin, 2 ANCAB 247 (Dec. 28, 1977) 84 I.D. 1007

Jurisdiction

When an interim conveyance and/or patent has been issued pursuant to the Alaska Native Claims Settlement Act, the Secretary of the Interior and this Board lose all authority and jurisdiction over those interests in land which have been conveyed.

Under 43 CFR Part 4, Subpart J, and 43 CFR 2650 appeals to the Secretary under ANCSA relating to land selection are to the Alaska Native Claims Appeal Board. In the absence of regulations establishing a procedure by which the Secretary will review easements reserved in conveyances as contemplated by 43 CFR 2650.4-7(c)(1) and Secretarial Order No. 2982, the Board is not precluded from exercising the Secretary's authority to review easement reservations when such review is requested through an appeal to the Board.

Appeal of Eklutna, Inc., 1 ANCAB 305 (Mar. 15, 1977) 84 I.D. 105

When an interim conveyance has been issued pursuant to ANCSA, the Secretary of the Interior and ANCAB lose all authority and jurisdiction over those interests in the land which have been conveyed, and the Secretary is without jurisdiction to reserve any easements not originally contained in the conveyance or to deprive the grantee of the interim conveyance of any interests conveyed therein.

For the purpose of determining jurisdiction, a patent issued by the State of Alaska on TA'd lands within an 11(a)(2) withdrawal, will be accorded the same dignity as a Federal patent, i.e., the effect of the issuance of a patent to public lands by the United States, even if issued by mistake or inadvertence, is to transfer the legal title from the United States and to end all authority and jurisdiction in the Department of the Interior over the lands conveyed. Therefore the Board finds it lacks jurisdiction to decide the status of patents issued by the State of Alaska prior to ANCSA to third parties on TA'd lands, as the proper form for such an adjudication is in a judicial proceeding.

Although the validity of S.O. 2982 is being challenged on numerous grounds in pending litigation, the Board

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Jurisdiction--Continued

currently is bound by S.O. 2982, and insofar as it purports to limit and restrict the Board's jurisdictional authority, the Board's jurisdiction is so affected.

Appeals of the State of Alaska and Seldovia Native Assoc., Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

Where interim conveyance has been issued for the lands embraced by oil and gas lease offers, the Department no longer has jurisdiction over the lands and has no authority to convey any interests in the lands, including mineral leases.

All challenges to the validity of ANCSA are beyond the jurisdiction of an administrative adjudicative body organized to decide appeals under that statute.

Appeal of Terry E. Krize and J. Burglin, 2 ANCAB 247 (Dec. 28, 1977) 84 I.D. 1007

Parties

Under regulations contained in 43 CFR 4.902, a Regional Corporation has a right of appeal.

Where a person is designated a necessary party by Order of the Board and is given actual notice of administrative proceedings which may affect a claimed property interest, and such person fails to appeal and assert any claim, such person may be dismissed as a party and the Board may adjudicate the property interest of other parties without regard to any interest which may be claimed by the party who fails to appear.

Appeals of the State of Alaska and Seldovia Native Assoc., Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

Reconsideration

Where regulations provide that a party may promptly request the reconsideration of a decision but provides no time limit for the filing of such a request, a request for reconsideration filed within a reasonable time under the circumstances of the appeal will be considered timely.

A Petition for Reconsideration will be granted when in its discretion, the Alaska Native Claims Appeal Board finds that extraordinary circumstances do exist that had not been considered by the Board in rendering its decision.

Appeal of Eklutna, Inc., 2 ANCAB 214 (Dec. 19, 1977) 84 I.D. 982

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Standing

The Board, in its discretion, will not summarily dismiss an appeal for failure to file a Statement of Standing merely because a Statement of Standing was not separately filed or separately labeled, where the timely filed Statement of Reasons clearly discloses the claim of property interests required for standing to appeal by 43 CFR 4.902.

Where the State clearly has standing to appeal a decision, and its appeal is consolidated by the Board for adjudication with another appeal in which the State's standing to appeal is challenged, the State's standing to appeal in the consolidated matter will not be prejudiced.

Appeals of the State of Alaska and Seldovia Native Assoc., Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

In view of Secretarial policy to expedite conveyances under ANCSA by rejecting pending noncompetitive oil and gas lease offers which conflict in whole or in part with such conveyances, and in view of the Secretary's conclusion that oil and gas lease offerors do not have a "property interest in land" sufficient to convey standing under 43 CFR 4.902, an appeal by an offeror from a BLM decision rejecting an offer for a noncompetitive oil and gas lease will be dismissed.

Appeal of E. H. Wargo, 2 ANCAB 98 (July 15, 1977)

Appeal of William G. Zaegel, 2 ANCAB 115 (July 15, 197-

Appeal of Terry E. Krize and J. Burglin, 2 ANCAB 126 (Aug. 4, 1977)

Appeal of Clifford C. Burglin, 2 ANCAB 134 (Aug. 4, 1977)

Where, pursuant to Departmental regulations, a party must claim a property interest in land affected by a decision in order to have standing to appeal such a decision, and the Secretary has found as a matter of law that a noncompetitive oil and gas lease offeror has no property interest in his offer, the Board finds that offerors for noncompetitive oil and gas leases do not have standing under 43 CFR 4.902 to appeal a BLM decision to issue conveyance to a Native Corporation under ANCSA.

The Board will accept appeals from decisions rejecting noncompetitive oil and gas lease offers based on conflicts with interim conveyances under ANCSA, but will dismiss such appeals after elapse of the 30-day period in which statements of reasons and standing may be filed.

Appeal of Terry E. Krize and J. Burglin, 2 ANCAB 247 (Dec. 28, 1977) 84 I.D. 1007

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Statement of Facts for Standing

Pursuant to 43 CFR Subpart J, 4.903(b)(2), within 30 days after filing of the Notice of Appeal, the appellant shall file with the Board a statement of facts upon which the appellant relies for standing.

Appeal of Cook Inlet Region, Inc., 2 ANCAB 166 (Nov. 16, 1977)

Statement of Reasons

Pursuant to 43 CFR Subpart J, 4.903(b)(1), if a Notice of Appeal does not include a Statement of Reasons for the appeal, such a statement shall be filed with the Board within 30 days after the Notice of Appeal was filed.

Appeal of Cook Inlet Region, Inc., 2 ANCAB 166 (Nov. 16, 1977)

The Board will accept appeals from decisions rejecting noncompetitive oil and gas lease offers based on conflicts with interim conveyances under ANCSA, but will dismiss such appeals after elapse of the 30-day period in which statements of reasons and standing may be filed.

Appeal of Terry E. Krize and J. Burglin, 2 ANCAB 247 (Dec. 28, 1977) 84 I.D. 1007

Summary Dismissal

An appeal will be dismissed for lack of diligent prosecution when the appellant fails to comply with an order of the Board requiring a showing of cause or the filing of other documents.

Appeal of Leonard A. Sivertsen, 1 ANCAB 294 (Jan. 14, 1977)

Absent another party aligned in interest with the appellant or other reasons justifying continuance of the appeal, an appeal will be dismissed when the sole appellant before the Board withdraws its appeal.

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 1 ANCAB 317 (Apr. 8, 1977)

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 1 ANCAB 322 (Apr. 8, 1977)

Appeal of State of Alaska, 1 ANCAB 327 (Apr. 15, 1977)

Appeal of NANA Regional Corp., Inc., 1 ANCAB 334 (Apr. 15, 1977)

Appeal of U.S. Fish and Wildlife Service, 1 ANCAB 341 (Apr. 28, 1977)

Appeal of State of Alaska, 1 ANCAB 345 (May 4, 1977)

Appeal of State of Alaska, 1 ANCAB 348 (May 4, 1977)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Summary Dismissal--Continued

Appeal of State of Alaska, 1 ANCAB 351 (May 4, 1977)

Appeal of State of Alaska, 1 ANCAB 354 (May 4, 1977)

The Board, in its discretion, will not summarily dismiss an appeal for failure to file a Statement of Standing merely because a Statement of Standing was not separately filed or separately labeled, where the timely filed Statement of Reasons clearly discloses the claim of property interests required for standing to appeal by 43 CFR 4.902.

Appeals of the State of Alaska and Seldovia Native Assoc., Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

Absent another party aligned in interest with the appellants or other reasons justifying continuance of the appeal, an appeal will be dismissed when the appellants before the Board withdraw their appeal.

Appeal of Kodiak Island Borough and the City of Kodiak, 2 ANCAB 123 (July 25, 1977)

Appeal of Choggiung, Ltd., 2 ANCAB 181 (Dec. 16, 1977)

Pursuant to 43 CFR Subpart J, 4.905, an appeal may, in the discretion of the Board, be dismissed for failure to file with the Board a Statement of Reasons and Statement of Standing as required by 43 CFR Subpart J, 4.903.

Appeal of Cook Inlet Region, Inc., 2 ANCAB 166 (Nov. 16, 1977)

Waiver

Where Departmental regulations provide for the elapse of a 30-day appeal period before a decision to convey becomes final, waiver by one of a number of parties who might appeal does not render BLM's decision final so as to permit conveyance before elapse of the 30-day appeal period.

Proper filing of a Notice of Appeal during the 30-day appeal period will be treated as a revocation of a prior waiver of appeal rights.

Appeals of the State of Alaska and Seldovia Native Assoc., Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES

Generally

For the purpose of determining whether or not the Secretary of the Interior retains jurisdiction to review easement interests reserved to the Federal Government, interim conveyance and patent, pursuant to 43 CFR 2650.0-5(h) and (i), are documents of equal significance in the granting of title under the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601-1624 (Supp. IV, 1974), as amended, 89 Stat. 1145 (1976).

When an interim conveyance and/or patent has been issued pursuant to the Alaska Native Claims Settlement Act, the Secretary of the Interior and this Board lose all authority and jurisdiction over those interests in land which have been conveyed.

Pursuant to 43 CFR 2650.4-7(c)(1) and Secretarial Order No. 2982, the Secretary of the Interior does have jurisdiction to review those easement interests reserved to the Federal Government in an interim conveyance or patent issued under the Alaska Native Claims Settlement Act.

When an interim conveyance or patent has issued, the Secretary of the Interior is without jurisdiction to reserve any easements not originally contained in the conveyance, or to deprive the grantee of the interim conveyance or patent of any interest conveyed therein.

Appeal of Eklutna, Inc., 1 ANCAB 305 (Mar. 15, 1977) 84 I.D. 105

For the purpose of determining whether or not the Secretary of the Interior retains jurisdiction to review easement interests reserved to the Federal Government, interim conveyance and patent are documents of equal significance in the granting of title under ANCSA.

When an interim conveyance has been issued pursuant to ANCSA, the Secretary of the Interior and ANCAB lose all authority and jurisdiction over those interests in the land which have been conveyed, and the Secretary is without jurisdiction to reserve any easements not originally contained in the conveyance or to deprive the grantee of the interim conveyance of any interests conveyed therein.

The Secretary retains jurisdiction pursuant to 43 CFR 2650.4-7(c)(1) and S.O. 2982, to review easements interests reserved to the Federal Government in an interim conveyance; and in the absence of regulations establishing a procedure for such review, the Board is not precluded from exercising the Secretary's authority to review easement reservations when such review is requested through appeal to the Board.

Appeals of the State of Alaska and Seldovia Native Assoc., Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

In view of Secretarial policy to expedite conveyances under ANCSA by rejecting pending noncompetitive oil and gas lease offers which conflict in whole or in part with such conveyances, and in view of the Secretary's conclusion that oil and gas lease offerors do not have

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES--Continued

Generally--Continued

a "property interest in land" sufficient to convey standing under 43 CFR 4.902, an appeal by an offeror from a BLM decision rejecting an offer for a noncompetitive oil and gas lease will be dismissed.

Where BLM, in accord with Secretarial policy, rejects a noncompetitive oil and gas lease offer because of a conflict with a conveyance under ANCSA, such rejection by BLM constitutes final agency action from which no administrative appeal will lie by the offeror to the Board or to the Interior Board of Land Appeals.

Appeal of E. H. Wargo, 2 ANCAB 98 (July 15, 1977)

Appeal of William G. Zaegel, 2 ANCAB 115 (July 15, 1977)

Appeal of Terry E. Krize and J. Burglin, 2 ANCAB 126 (Aug. 4, 1977)

Appeal of Clifford C. Burglin, 2 ANCAB 134 (Aug. 4, 1977)

Where, pursuant to Departmental regulations, a party must claim a property interest in land affected by a decision in order to have standing to appeal such a decision, and the Secretary has found as a matter of law that a noncompetitive oil and gas lease offeror has no property interest in his offer, the Board finds that offerors for noncompetitive oil and gas leases do not have standing under 43 CFR 4.902 to appeal a BLM decision to issue conveyance to a Native Corporation under ANCSA.

Where interim conveyance has been issued for the lands embraced by oil and gas lease offers, the Department no longer has jurisdiction over the lands and has no authority to convey any interests in the lands, including mineral leases.

Sec. 22(i) of ANCSA, 43 U.S.C. § 1621(i) (1970), does not authorize the issuance of mineral leases on lands to be conveyed under ANCSA.

The Board vacates its previous ruling that BLM's rejection of a noncompetitive oil and gas lease offer, because of conflict with an ANCSA conveyance, constitutes final agency action from which no appeal will lie.

Appeal of Terry E. Krize and J. Burglin, 2 ANCAB 247 (Dec. 28, 1977) 84 I.D. 1007

DEFINITIONS

Generally

Lands on which the United States has issued patent either to the State or to a private individual are not within the definition of "public lands" in sec. 3(e) of ANCSA, were not withdrawn by sec. 11 of ANCSA, and therefore are not available for selection under ANCSA.

Appeals of the State of Alaska and Seldovia Native Assoc., Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

EASEMENTS

Review

For the purpose of determining whether or not the Secretary of the Interior retains jurisdiction to review easement interests reserved to the Federal Government, interim conveyance and patent, pursuant to 43 CFR 2650.0-5(h) and (i), are documents of equal significance in the granting of title under the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601-1624 (Supp. IV, 1974), as amended, 89 Stat. 1145 (1976).

Pursuant to 43 CFR 2650.4-7(c)(1) and Secretarial Order No. 2982, the Secretary of the Interior does have jurisdiction to review those easement interests reserved to the Federal Government in an interim conveyance or patent issued under the Alaska Native Claims Settlement Act.

Under 43 CFR Part 4, Subpart J, and 43 CFR 2650 appeals to the Secretary under ANCSA relating to land selection are to the Alaska Native Claims Appeal Board. In the absence of regulations establishing a procedure by which the Secretary will review easements reserved in conveyances as contemplated by 43 CFR 2650.4-7(c)(1) and Secretarial Order No. 2982, the Board is not precluded from exercising the Secretary's authority to review easement reservations when such review is requested through an appeal to the Board.

When an interim conveyance or patent has issued, the Secretary of the Interior is without jurisdiction to reserve any easements not originally contained in the conveyance, or to deprive the grantee of the interim conveyance or patent of any interest conveyed therein.

Appeal of Eklutna, Inc., 1 ANCAB 305 (Mar. 15, 1977) 84 I.D. 105

For the purpose of determining whether or not the Secretary of the Interior retains jurisdiction to review easement interests reserved to the Federal Government, interim conveyance and patent are documents of equal significance in the granting of title under ANCSA.

The Secretary retains jurisdiction pursuant to 43 CFR 2650.4-7(c)(1) and S.O. 2982, to review easement interests reserved to the Federal Government in an interim conveyance; and in the absence of regulations establishing a procedure for such review, the Board is not precluded from exercising the Secretary's authority to review easement reservations when such review is requested through appeal to the Board.

Appeals of the State of Alaska and Seldovia Native Assoc., Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

INDIAN RESIDENCE ALLOTMENT

The filing of an option form by an Alaska Native to receive his "primary place of residence" pursuant to sec. 14(h)(5) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1613(h)(5) (Supp. III, 1973), does not terminate a prior allotment application filed under the Native Allotment Act, 43 U.S.C. § 270-1 (1970). Allowance of an application under either act renders

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

INDIAN RESIDENCE ALLOTMENT--Continued

the applicant ineligible for allowance of the other application.

Pursuant to 43 CFR 2653.8-3, appeals from decisions made by the Bureau of Land Management on applications filed pursuant to sec. 14(h)(5) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1613(h)(5) (Supp. III, 1973), "shall be made to the Alaska Native Claims Appeals Board."

Dwight Tevuk, Deceased (On Reconsideration), 29 IBLA 160 (Mar. 9, 1977)

LAND SELECTIONS

Generally

As of Dec. 18, 1975, lands withdrawn under sec. 11(a)(1) or sec. 11(a)(3) and not selected under secs. 12 or 19 of the Act, became lands outside the areas withdrawn by sec. 11 and became available for selection as a primary place of residence under sec. 14(h)(5).

An applicant who filed an application for a primary place of residence within the time limits set forth by sec. 14(h)(5) and 43 CFR 2653.8 on land which was withdrawn by sec. 11(a)(1) or sec. 11(a)(3) as of the date of filing, shall not have his application rejected pursuant to 43 CFR 2091.1 as a premature filing when Departmental regulations specifically permit the selection of formerly withdrawn land after Dec. 18, 1975, but do not permit a primary place of residence applicant to refile his application.

Appeal of William Thomas Woolard, 2 ANCAB 150 (Nov. 3, 1977) 84 I.D. 891

Conveyances

The interests described in sec. 14(g) of ANCSA are of a temporary or limited nature, in contrast to those interests derived from laws leading to a grant of fee title such as the entries protected by sec. 22(b). Inclusion in Native conveyances of lands subject to such interests, under administrative arrangements outlined in sec. 14(g) is appropriate, because such temporary or limited interests are not incompatible with Native ownership of the fee.

Leases issued for the surface or minerals covered by a Native selection constitute a valid existing right protected by sec. 14(g) of ANCSA and any conveyance to a Native Corporation of lands on which such a lease has issued must be subject to the leasehold interest.

State-issued permits and contracts for resource uses issued to third parties before Dec. 18, 1971, are protected as valid existing rights under sec. 14(g) of ANCSA, and any conveyance to a Native Corporation of lands on which such permits or contracts have been issued must be subject to such interests.

Appeals of the State of Alaska and Seldovia Native Assoc., Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

LAND SELECTIONS--Continued

Easements

Generally

Where the Bureau of Land Management has developed new procedures for the reservation and identification of easements subsequent to issuance of a Decision to Convey, the Board will remand the Decision to Convey to the Bureau of Land Management for the limited purpose of identifying the easements reserved in the Decision to Convey under appeal according to the uniform easement identification system currently being followed.

Appeals of the State of Alaska and Seldovia Native Assoc., Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

Description

Description of easements solely by reference to a BLM or State Division of Lands case file number is not sufficient to meet the requirements of sec. 17(b) of ANCSA, regulations promulgated thereunder, and Secretarial Order No. 2982.

Decisions to convey and interim conveyances should, as a minimum state the use for which each easement is reserved, state the width of each easement, state at least the sections through which an easement passes or, if a site easement, the section or sections in which the easement is located; alternatively, the easement could be located by incorporating in the conveyance document a map depicting the easement.

Appeals of the State of Alaska and Seldovia Native Assoc., Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

Entrymen

ANCSA protects, as "valid existing right," those rights, whether derived from the State or Federal Government, which do not lead to a grant of fee title and which were created prior to enactment of ANCSA. Rights leading to a fee, which had vested prior to enactment, would not be subject to Congressional disposal and would be excluded from withdrawals for Native selection. Rights of entrymen leading to a grant in fee under Federal public land laws, which had not vested prior to ANCSA, are treated by ANCSA as if vesting had occurred and are not categorized as "valid existing rights."

Appeals of the State of Alaska and Seldovia Native Assoc., Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

State Interests

Generally

Where the State had not acquired equitable title to tentatively approved land selections within village withdrawal areas prior to ANCSA, a grantee of the State could not acquire a greater interest than its grantor and could not, prior to ANCSA, acquire equitable title sufficient to deprive Congress of power to dispose of

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

LAND SELECTIONS--Continued

State Interests--Continued

Generally--Continued

the land in settlement of Native claims. Accordingly, any protection or priority afforded to third-party interests in the disputed lands must be statutory, conferred by ANCSA.

"Valid existing rights" protected by ANCSA include not only interests created by the Federal Government, but may also include interests created by the State of Alaska so long as the latter are not interests leading to acquisition of fee title.

Open-to-entry leases issued by the State of Alaska pursuant to A.S. 38.05.077 are protected as valid existing rights by the specific terms of sec. 14(g) of ANCSA because they are leases issued under sec. 6(g) of the Alaska Statehood Act.

Where open-to-entry leases contain no provisions to purchase the leased land, but provide only for renewal upon expiration of a five-year term, the right of purchase asserted under A.S. 38.05.077 is not granted by the lease within the terms of sec. 14(g) of ANCSA, but appears to be an associated preference right granted in connection with the leasing program to individuals holding such leases.

Where the asserted right to purchase lands held under an open-to-entry lease can be exercised under State statutes only if the lease is relinquished, relinguishment of the lease and subsequent issuance of patent to the land would constitute a new interest created subseguent to ANCSA, contrary to sec. 11(a)(2) which specifically withdraws lands TA'd to the State "from the creation of third-party interests under the Alaska Statehood Act."

The State may not extend a preference right to purchase lands under an open-to-entry lease program to which a Native Corporation will hold title; although a Native Corporation, succeeding under sec. 14(g) to the interest of the State as lessor, may wish to sell the leased land to the lessee, the Board finds no mechanism in ANCSA for the enforcement of such a right in the lessee against a Native patentee.

When an interest in land selected by and tentatively approved to the State of Alaska was transferred from one State agency to another, the complete interest remained subject to the withdrawal and selection provisions of sec. 11(a) and sec. 12 of ANCSA; thus transfer by the State of a permit to extract natural resources from the State Division of Lands to the State Division of Aviation does not place the State in the position of a protected third party under ANCSA.

Appeals of the State of Alaska and Seldovia Native Assoc., Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

LAND SELECTIONS--Continued

State Interests--Continued

Statehood Act Selections

Tentative Approvals

ANCSA provides in secs. 11(a)(2) and 12(a)(1) that each village may select up to 69,120 acres of its total entitlement from TA'd lands surrounding the village. Such State TA's, already encumbered by aboriginal title to lands on which use and occupancy could be proved, were not subject to a statutory prior right of selection by Village Corporations; a Native right of selection, based not on aboriginal title, but on Congressional grant in ANCSA.

The retroactive extinguishment of aboriginal title, and the resulting validation of State title, mandated by sec. 4(a) of ANCSA, applies to those lands tentatively approved to the State which are located outside Native village withdrawal areas.

Extinguishment of aboriginal title did not vest the State's title to those TA'd lands located within sec. 11(a)(2) withdrawal areas, for Congress clearly conferred on Native Village Corporations a superior right to select up to 69,120 acres of such lands.

The State's interest in TA'd lands located within sec. 11(a)(2) withdrawal areas did not vest prior to ANCSA, and did not vest subseguent to ANCSA as to lands properly selected by Village Corporations within the three-year period mandated by sec. 12(a).

The State's interest vests in those TA'd lands within sec. 11(a)(2) withdrawals not selected by Village Corporations within statutory deadlines, for, upon completion of Native selections, the last encumbrance on the State's title is removed.

In withdrawing sec. 11(a)(2) lands tentatively approved to the State, Congress rejected the State's contention that tentative approval vested equitable title in the State, and in conseguence rejected the title the State had relied upon to dispose of TA'd lands to third parties.

Where the claimed "valid existing rights" were created by the State on lands tentatively approved to the State under the Statehood Act, the adjudication of the State's selection must be consolidated with the adjudication of the native land selection, and valid existing rights in the land must be determined in a single decision.

Appeals of the State of Alaska and Seldovia Native Assoc., Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

Third-Party Interests

Where the State had not acquired equitable title to tentatively approved land selections within village withdrawal areas prior to ANCSA, a grantee of the State could not acquire a greater interest than its grantor and could not, prior to ANCSA, acquire equitable title sufficient to deprive Congress of power to dispose of the land in settlement of Native claims. Accordingly,

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

LAND SELECTIONS--Continued

Third-Party Interests--Continued

any protection or priority afforded to third-party interests in the disputed lands must be statutory, conferred by ANCSA.

Open-to-entry leases issued by the State of Alaska pursuant to A.S. 38.05.077 are protected as valid existing rights by the specific terms of sec. 14(g) of ANCSA because they are leases issued under sec. 6(g) of the Alaska Statehood Act.

Where open-to-entry leases contain no provisions to purchase the leased land, but provide only for renewal upon expiration of a five-year term, the right of purchase asserted under A.S. 38.05.077 is not granted by the lease within the terms of sec. 14(g) of ANCSA, but appears to be an associated preference right granted in connection with the leasing program to individuals holding such leases.

Where the asserted right to purchase lands held under an open-to-entry lease can be exercised under State statutes only if the lease is relinquished, relinquishment of the lease and subsequent issuance of patent to the land would constitute a new interest created subsequent to ANCSA, contrary to sec. 11(a)(2) which specifically withdraws lands TA'd to the State "from the creation of third-party interests under the Alaska Statehood Act."

The State may not extend a preference right to purchase lands under an open-to-entry lease program to which a Native Corporation will hold title; although a Native Corporation, succeeding under sec. 14(g) to the interest of the State as lessor, may wish to sell the leased land to the lessee, the Board finds no mechanism in ANCSA for the enforcement of such a right in the lessee against a Native patentee.

When an interest in land selected by and tentatively approved to the State of Alaska was transferred from one State agency to another, the complete interest remained subject to the withdrawal and selection provisions of sec. 11(a) and sec. 12 of ANCSA; thus transfer by the State of a permit to extract natural resources from the State Division of Lands to the State Division of Aviation does not place the State in the position of a protected third party under ANCSA.

Appeals of the State of Alaska and Seldovia Native Assoc., Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

Sec. 22(i) of ANCSA, 43 U.S.C. § 1621(i) (1970), does not authorize the issuance of mineral leases on lands to be conveyed under ANCSA.

Appeal of Terry E. Krize and J. Burglin, 2 ANCAB 247 (Dec. 28, 1977) 84 I.D. 1007

Valid Existing Rights

ANCSA protects, as "valid existing rights," those rights, whether derived from the State or Federal government, which do not lead to a grant of fee title and which were created prior to enactment of ANCSA. Rights leading to a fee, which had vested prior to enactment, would not be subject to Congressional disposal and

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

LAND SELECTIONS--Continued

Valid Existing Rights--Continued

would be excluded from withdrawals for Native selection. Rights of entrymen leading to a grant in fee under Federal public land laws, which had not vested prior to ANCSA, are treated by ANCSA as if vesting had occurred and are not categorized as "valid existing rights."

"Valid existing rights" protected by ANCSA include not only interests created by the Federal Government, but may also include interests created by the State of Alaska so long as the latter are not interests leading to acquisition of fee title.

The interests described in sec. 14(g) of ANCSA are of a temporary or limited nature, in contrast to those interests derived from laws leading to a grant of fee title such as the entries protected by sec. 22(b). Inclusion in Native conveyances of lands subject to such interests, under administrative arrangements outlined in sec. 14(g) is appropriate, because such temporary or limited interests are not incompatible with Native ownership of the fee.

Open-to-entry leases issued by the State of Alaska pursuant to A.S. 38.05.077 are protected as valid existing rights by the specific terms of sec. 14(g) of ANCSA because they are leases issued under sec. 6(g) of the Alaska Statehood Act.

Where open-to-entry leases contain no provisions to purchase the leased land, but provide only for renewal upon expiration of a five-year term, the right of purchase asserted under A.S. 38.05.077 is not granted by the lease within the terms of sec. 14(g) of ANCSA, but appears to be an associated preference right granted in connection with the leasing program to individuals holding such leases.

Where the asserted right to purchase lands held under an open-to-entry lease can be exercised under State statutes only if the lease is relinquished, relinquishment of the lease and subsequent issuance of patent to the land would constitute a new interest created subsequent to ANCSA, contrary to sec. 11(a)(2) which specifically withdraws lands TA'd to the State "from the creation of third-party interests under the Alaska Statehood Act."

The State may not extend a preference right to purchase lands under an open-to-entry lease program to which a Native Corporation will hold title; although a Native Corporation, succeeding under sec. 14(g) to the interest of the State as lessor, may wish to sell the leased land to the lessee, the Board finds no mechanism in ANCSA for the enforcement of such a right in the lessee against a Native patentee.

Leases issued for the surface or minerals covered by a Native selection constitute a valid existing right protected by sec. 14(g) of ANCSA and any conveyance to a Native Corporation of lands on which such a lease has issued must be subject to the lease hold interest.

State-issued permits and contracts for resource uses issued to third parties before Dec. 18, 1971, are protected as valid existing rights under sec. 14(g) of ANCSA, and any conveyance to a Native Corporation of

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

LAND SELECTIONS--Continued

Valid Existing Rights--Continued

lands on which such permits or contracts have been issued must be subject to such interests.

When an interest in land selected by and tentatively approved to the State of Alaska was transferred from one State agency to another, the complete interest remained subject to the withdrawal and selection provisions of sec. 11(a) and sec. 12 of ANCSA; thus transfer by the State of a permit to extract natural resources from the State Division of Lands to the State Division of Aviation does not place the State in the position of a protected third party under ANCSA.

Since ANCSA recognizes and protects State-created interests as valid existing rights, as well as interests recognized or created under Federal law, thus involves interests which would not be of record in the BLM land office, BLM's administrative responsibility to identify, adjudicate and protect "valid existing rights" under ANCSA, are broader than under general Federal public land laws.

While decisions of the Bureau of Land Management and documents conveying title to Native corporations pursuant to ANCSA properly contain a general provision protecting "valid existing rights" in accordance with the provisions of sec. 14(g) of ANCSA and the regulations in 43 CFR 2650, such documents must additionally describe valid existing rights according to the nature of the right and approximate location on the land, and may incorporate by reference other BLM files and files of the Alaska Division of Lands only as a supplemental source of information.

Under ANCSA and the regulations in 43 CFR 2650, the Bureau of Land Management has the duty to ascertain whether a less-than-fee interest was issued to a third party, and must recite in the decision approving lands for conveyance to a Native Corporation that the conveyance is "subject to" such an interest.

Where the claimed "valid existing rights" were created by the State on lands tentatively approved to the State under the Statehood Act, the adjudication of the State's selection must be consolidated with the adjudication of the Native land selection, and valid existing rights in the land must be determined in a single decision.

Both the decision to convey lands, and the interim conveyance, must specifically identify those interests protected under ANCSA as valid existing rights. Where the title conveyed will be "subject to" a less-than-fee interest, the nature of the interest must be identified and the lands affected must be described, at least by section and, where possible, according to the smallest legal subdivision.

Appeals of the State of Alaska and Seldovia Native Assoc., Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

Village Selections

ANCSA provides in secs. 11(a)(2) and 12(a)(1) that each village may select up to 69,120 acres of its total entitlement from TA'd lands surrounding the village. Such State TA's, already encumbered by aboriginal title to lands on which use and occupancy could be proved, were not subject to a statutory prior right of selection by Village Corporations; a Native right of selection,

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

LAND SELECTIONS--Continued

Village Selections--Continued

based not on aboriginal title, but on Congressional grant in ANCSA.

Appeals of the State of Alaska and Seldovia Native Assoc., Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

PRIMARY PLACE OF RESIDENCE

Generally

When a Village Corporation selects withdrawn lands in one section, but excepts from selection a smaller tract of withdrawn land within the section, no determination can be made as to whether a sec. 11 withdrawal terminated on the tract of land excepted from selection until such time as a decision is rendered by the Bureau of Land Management on the validity of the exception from selection.

As of Dec. 18, 1975, lands withdrawn under sec. 11(a)(1) or sec. 11(a)(3) and not selected under secs. 12 or 19 of the Act, became lands outside the areas withdrawn by sec. 11 and became available for selection as a primary place of residence under sec. 14(h)(5).

An applicant who filed an application for a primary place of residence within the time limits set forth by sec. 14(h)(5) and 43 CFR 2653.8 on land which was withdrawn by sec. 11(a)(1) or sec. 11(a)(3) as of the date of filing, shall not have his application rejected pursuant to 43 CFR 2091.1 as a premature filing when Departmental regulations specifically permit the selection of formerly withdrawn land after Dec. 18, 1975, but do not permit a primary place of residence applicant to refile his application.

Appeal of William Thomas Woolard, 2 ANCAB 150 (Nov. 3, 1977) 84 I.D. 891

Criteria

The language of regulation 43 CFR 2653.8-2(b)(1) is unequivocal that the applicant "must have a dwelling" on the tract of land applied for as a primary place of residence pursuant to sec. 14(h)(5) of ANCSA. Absent the meeting of this criteria the application must be rejected.

Appeal of Wilfred A. Young, 2 ANCAB 211 (Dec. 19, 1977)

In order to establish a primary place of residence pursuant to sec. 14(h)(5) of ANCSA, a dwelling must be constructed upon the land applied for as a primary place of residence.

The fact that an applicant has a dwelling in the vicinity or adjacent to land sought as a primary place of residence is not sufficient to meet the criteria necessary to establish a primary place of residence.

Appeal of Donald Watson, 2 ANCAB 258 (Dec. 29, 1977) 84 I.D. 1015

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

SURVEY

Generally

The Alaska Native Claims Appeal Board, in reversing a previous decision, finds that townships, which by legal description have a common corner, but are not in actual physical contact due to the location of a "standard parallel" or "correction" line, such townships shall be considered as not cornering for purposes of sec. 11(a) of ANCSA.

Appeal of Eklutna, Inc., 2 ANCAB 214 (Dec. 19, 1977) 84 I.D. 982

Standard Parallel

The Alaska Native Claims Appeal Board, in reversing a previous decision, finds that townships, which by legal description have a common corner, but are not in actual physical contact due to the location of a "standard parallel" or "correction" line, such townships shall be considered as not cornering for purposes of sec. 11(a) of ANCSA.

Appeal of Eklutna, Inc., 2 ANCAB 214 (Dec. 19, 1977) 84 I.D. 982

VILLAGE ELIGIBILITY

Unlisted Villages

A village or community in southeast Alaska which is not listed within sec. 16(a) of the Alaska Native Claims Settlement Act is not eligible for benefits under the Act.

Appeal of Ketchikan Indian Corp., 2 ANCAB 169 (Nov. 8, 1977)

VILLAGE ENTITLEMENT

The determination that a Village Corporation is eligible under sec. 11 of ANCSA is a finding that such village had at least a minimum Native population of 25 on the 1970 census enumeration date and thus entitles such village to at least the minimum acreage allocation pursuant to sec. 14(a) of ANCSA.

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 2 ANCAB 183 (Dec. 19, 1977)

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 2 ANCAB 187 (Dec. 19, 1977)

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 2 ANCAB 191 (Dec. 19, 1977)

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 2 ANCAB 195 (Dec. 19, 1977)

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 2 ANCAB 199 (Dec. 19, 1977)

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 2 ANCAB 203 (Dec. 19, 1977)

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 2 ANCAB 207 (Dec. 19, 1977)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

VILLAGE ENTITLEMENT--Continued

Appeal of U.S. Fish and Wildlife Services, 2 ANCAB 223 (Dec. 20, 1977)

Appeal of U.S. Fish and Wildlife Services, 2 ANCAB 227 (Dec. 20, 1977)

Appeal of U.S. Fish and Wildlife Services, 2 ANCAB 231 (Dec. 20, 1977)

Appeal of U.S. Fish and Wildlife Services, 2 ANCAB 235 (Dec. 20, 1977)

Appeal of U.S. Fish and Wildlife Services, 2 ANCAB 239 (Dec. 20, 1977)

Appeal of U.S. Fish and Wildlife Services, 2 ANCAB 243 (Dec. 20, 1977)

WITHDRAWALS

Generally

The State's interest in TA'd lands located within sec. 11(a)(2) withdrawal areas did not vest prior to ANCSA, and did not vest subsequent to ANCSA as to lands properly selected by Village Corporations within the three-year period mandated by sec. 12(a).

The State's interest vests in those TA'd lands within sec. 11(a)(2) withdrawals not selected by Village Corporations within statutory deadlines, for, upon completion of Native selections, the last encumbrance on the State's title is removed.

In withdrawing sec. 11(a)(2) lands tentatively approved to the State, Congress rejected the State's contention that tentative approval vested equitable title in the State, and in consequence rejected the title the State had relied upon to dispose of TA'd lands to third parties.

Lands on which the United States has issued patent either to the State or to a private individual are not within the definition of "public lands" in sec. 3(e) of ANCSA, were not withdrawn by sec. 11 of ANCSA, and therefore are not available for selection under ANCSA.

Appeals of the State of Alaska and Seldovia Native Assoc., Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

The withdrawal of lands pursuant to sec. 11(a)(1) of ANCSA took place on Dec. 18, 1971, the date of passage of ANCSA.

When a Village Corporation selects withdrawn lands in one section, but excepts from selection a smaller tract of withdrawn land within the section, no determination can be made as to whether a sec. 11 withdrawal terminated on the tract of land excepted from selection until such time as a decision is rendered by the Bureau of Land Management on the validity of the exception from selection.

Appeal of William Thomas Woolard, 2 ANCAB 150 (Nov. 3, 1977) 84 I.D. 891

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

WITHDRAWALS--Continued

Cornering

The Alaska Native Claims Appeal Board, in reversing a previous decision, finds that townships, which by legal description have a common corner, but are not in actual physical contact due to the location of a "standard parallel" or "correction" line, such townships shall be considered as not cornering for purposes of sec. 11(a) of ANCSA.

Appeal of Eklutna, Inc., 2 ANCAB 214 (Dec. 19, 1977) 84 I.D. 982

Termination

Under sec. 22(h)(1) of ANCSA, the withdrawal of lands pursuant to sec. 11(a)(1) terminated as of Dec. 18, 1975, a date 4 years after the date of enactment of the Act, unless the lands were selected by a Native Corporation under sec. 12 of ANCSA.

Appeal of William Thomas Woolard, 2 ANCAB 150 (Nov. 3, 1977) 84 I.D. 891

APPEALS

(See also Contracts, Federal Coal Mine Health and Safety Act of 1969, Grazing Permits and Licenses, Indian Probate, Indian Tribes, Rules of Practice, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.)

Rejection of the high bid tendered for a parcel of land offered at a sale of competitive oil and gas leases will be affirmed on appeal where the case file contains memoranda from the U.S. Geological Survey sufficient to establish that the pre-sale minimum evaluation for the tract was accomplished by a GS lease sale committee consisting of an engineer and a geologist, and their reasoned evaluation was considerably in excess of appellant's bid.

Frances J. Richmond, 29 IBLA 137 (Mar. 3, 1977)

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed.

Duncan Miller, 29 IBLA 174 (Mar. 14, 1977)

A rejection of a high bid tendered for a parcel of land offered at a sale of competitive oil and gas leases will be affirmed on appeal where the record contains sufficient information from the U.S. Geological Survey to establish that the pre-sale minimum evaluation for the tract, which greatly exceeded the rejected bid, was not arbitrary or capricious, it having been arrived at by a lease sale committee consisting of two geologists and three engineers which in addition to considering the results of a computer analysis took into account a

APPEALS--Continued

hand compilation and the judgment and knowledge of the committee.

Coquina Oil Corp., 29 IBLA 310 (Mar. 30, 1977)

Where a decision of the Board of Land Appeals is based upon an interpretation of Departmental policy, and that policy is subsequently revised and clarified so as to impel a different result in the case without prejudice to the right of any third party, on reconsideration by the Board that portion of its original decision will be modified and the revised policy will be implemented.

Warner Bergman (On Reconsideration), 31 IBLA 21 (June 20, 1977)

Where a right-of-way application has been rejected in part, an appeal therefrom should be dismissed if not filed within the period prescribed in 43 CFR 4.411.

When a right-of-way applicant fails to submit corrected maps and payment of charges within a reasonable time after notice, which notice does not prescribe a specific time therefor, but on appeal applicant explains the reasons for delay, a rejection of the application may be set aside and the case remanded.

Jerrold R. Cooley, Lucy M. Cooley, 32 IBLA 387 (Nov. 7, 1977)

Where appellant's allegations on appeal are immaterial and irrelevant and appellant fails to establish any error in the decision below or any infringement of appellant's rights, the appeal is properly dismissed as lacking in merit.

Duncan Miller, 33 IBLA 83 (Dec. 8, 1977)

Under 43 CFR 3522.2-1(a), a proposed readjustment of a coal lease should not be appealed directly to the Board of Land Appeals under 43 CFR 4.410, but, rather, a lessee's objections thereto should first be referred to and acted upon by the State Office, Bureau of Land Management.

California Portland Cement Co., 33 IBLA 223 (Dec. 28, 1977)

APPLICATIONS AND ENTRIES

GENERALLY

Where an offer is drawn with first priority in a simultaneous drawing, and the offeror fails to pay the first year's rental timely, her failure to do so cannot be excused because of the asserted delay of the Postal Service.

Carma M. Pooley, 29 IBLA 304 (Mar. 30, 1977)

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

Where an applicant to purchase a trade and manufacturing site or a headquarters site states he was frustrated in completing his improvements and showing sufficient use of the land as required by the law because of more difficult or complex problems than anticipated, but has not shown that this operation could reasonably be expected to be successful, such problems will not afford any basis for equitable adjudication of his application to purchase.

United States v. Ronald B. Tippetts, 29 IBLA 348 (Mar. 31, 1977)

A delay in the adjudication of an application by officers or employees of the Department cannot create rights in Federal property contrary to law.

Guy W. Franson, 30 IBLA 123 (May 12, 1977)

Failure to answer completely a question on an application form for a desert land entry concerning citizenship of the applicant is not an adequate basis for rejecting the application when the requested information is readily apparent elsewhere on the application form.

Failure to include as required by 43 CFR 2521.2(b) the post office addresses of witnesses whose statements are part of an application for desert land entry is an adequate basis for rejecting the application.

William J. Hart, Lucile E. Hart, 30 IBLA 138 (May 12, 1977)

Where an offer is drawn with first priority in a simultaneous drawing, and the offeror fails to pay the first year's rental timely, his failure to do so cannot be excused because of the asserted delay in the Postal Service.

Jack Koegel, 30 IBLA 143 (May 12, 1977)

It is the responsibility of an applicant and entryman to keep BLM informed of his current address, with specific reference to the serial numbers of all cases affected thereby. Notification to BLM of a change of address with respect to a particular case does not constitute notice with respect to other cases not specifically described in such notification.

Apostolos Paliombeis, 30 IBLA 153 (May 16, 1977)

Where the regulation allows the filing of an application for a prospecting permit on a copy of the approved form not correctly reproduced, and the application contains a statement that the applicant agrees to be bound by the term conditions on the approved form, an application which consists of a copy of only the first page of a two-page form is properly rejected when it is not accompanied by the required statement.

UOP, Inc., 31 IBLA 142 (June 30, 1977)

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

A petition-application for a homestead entry outside of Alaska requires classification of the land, confers no rights upon an applicant and must be rejected because the Federal Land Policy and Management Act repealed the homestead laws effective on the date of the Act as to lands outside Alaska.

Daniel A. Anderson, 31 IBLA 162 (July 1, 1977)

A geothermal lease application is properly rejected to the extent that it includes land which has been reconveyed to the United States but which has only been opened to applications under the nonmineral public land laws.

Chevron Oil Co., 32 IBLA 275 (Sept. 27, 1977)

An applicant for prospecting permits is not the "sole party in interest," within the meaning of 43 CFR 3500.0-5(a), where another party participates in the preparation and filing of the application, and where an agreement exists at the time of filing under which the applicant is bound to assign to the other party any advantages gained by him from the applications.

Willadean Patton, Essex Minerals, Inc., National Bulk Carriers, Inc., 32 IBLA 350 (Oct. 21, 1977)

When lands have been classified under a final order of the Secretary of the Interior as being unsuitable for disposal under the desert land laws, a desert land entry petition-application will not be allowed.

Rulon Van Tassel, 33 IBLA 221 (Dec. 22, 1977)

AMENDMENTS

Where a homestead entry has been located on land later included within a withdrawal "subject to valid existing rights," the withdrawal attaches to the land within the homestead upon cancellation of the entry. An amendment of a homestead entry cannot include lands within a canceled adjoining entry to which a withdrawal has attached.

Pekka K. Merikallio, 30 IBLA 157 (May 18, 1977)

Where noncompetitive acquired lands oil and gas lease offers were allegedly deposited on the cashier's counter in the proper Bureau of Land Management office prior to close of business on a certain day, yet were not discovered by a Bureau employee until 6 a.m. the following day and date-time stamped as filed at 10 a.m. on such day, a protest and petition to amend the filing date of such offers are properly denied where the offeror produces no evidence to support her claim other than her personal affidavit; where no Bureau employee saw the offeror in the Bureau office at the time she claimed to have been there; where no Bureau employee

APPLICATIONS AND ENTRIES--Continued

AMENDMENTS--Continued

saw the offers on the counter until the following day; and where third-party rights are involved.

Laura J. Spangler, 30 IBLA 265 (May 31, 1977)

CANCELLATION

A request to reconsider a 1968 decision by the Department rejecting final proof for a homestead entry and canceling the entry is properly rejected in the absence of a showing of "extraordinary circumstances." In the absence of compelling legal or equitable reasons for reconsideration, the principle of res judicata, and its counterpart, finality of administrative action, will operate to bar consideration of a new appeal arising from a later proceeding involving the same claim and the same issues.

Pekka K. Merikallio, 30 IBLA 157 (May 18, 1977)

FILING

Where an offer is drawn with first priority in a simultaneous drawing, and the offeror fails to pay the first year's rental timely, her failure to do so cannot be excused because of the asserted delay of the Postal Service.

Carma M. Pooley, 29 IBLA 304 (Mar. 30, 1977)

Where an offer is drawn with first priority in a simultaneous drawing, and the offeror fails to pay the first year's rental timely, his failure to do so cannot be excused because of the asserted delay in the Postal Service.

Jack Koegel, 30 IBLA 143 (May 12, 1977)

It is the responsibility of an applicant and entryman to keep BLM informed of his current address, with specific reference to the serial numbers of all cases affected thereby. Notification to BLM of a change of address with respect to a particular case does not constitute notice with respect to other cases not specifically described in such notification.

Apostolos Paliombeis, 30 IBLA 153 (May 16, 1977)

The filing of a petition-application is treated as a petition for classification of the land. The mere filing of the application does not vest in the applicant any interest in the land and repeal of the authorizing statute mandates rejection of the application.

Arthur R. Wallace, 30 IBLA 239 (May 31, 1977)

APPLICATIONS AND ENTRIES--Continued

FILING--Continued

Where noncompetitive acquired lands oil and gas lease offers were allegedly deposited on the cashier's counter in the proper Bureau of Land Management office prior to close of business on a certain day, yet were not discovered by a Bureau employee until 6 a.m. the following day and date-time stamped as filed at 10 a.m. on such day, a protest and petition to amend the filing date of such offers are properly denied where the offeror produces no evidence to support her claim other than her personal affidavit; where no Bureau employee saw the offeror in the Bureau office at the time she claimed to have been there; where no Bureau employee saw the offers on the counter until the following day; and where third-party rights are involved.

Laura J. Spangler, 30 IBLA 265 (May 31, 1977)

An application for modification of an existing coal lease to include an entire section is properly rejected under sec. 3 of the Mineral Leasing Act, since it seeks to add more than the 160-acre maximum allowed thereunder, notwithstanding the fact that the application was filed prior to the enactment of this acreage limitation.

The filing of an application for modification of an existing coal lease is a hope or expectancy rather than a vested property right, and, as such, does not fall within a "valid existing rights" exception and is not protected by the Fifth Amendment.

Estate of Malcolm N. McKinnon, 31 IBLA 290 (July 22, 1977)

An application for modification of an existing coal lease to include an additional 361.52 acres is properly rejected under sec. 3 of the Mineral Leasing Act, since it seeks to add more than the 160-acre maximum allowed thereunder, notwithstanding the fact that the application was filed prior to the enactment of this acreage limitation.

The filing of an application for modification of an existing coal lease is a hope or expectancy rather than a vested property right, and, as such, does not fall within a "valid existing rights" exception and is not protected by the Fifth Amendment.

Gulf Oil Corp., 32 IBLA 13 (Aug. 29, 1977)

The authorized officer may not deem an oil and gas rental payment to have been timely filed, pursuant to 43 CFR 1821.2-2(g) if it is received at the State Office when it is not open to the public, even though the payment is presented on the last day in which payment can be made. Such payment is deemed to have been made on the day and hour the office is next open to business, as provided in 43 CFR 1821.2-2(d).

It is proper to deny a petition for reinstatement of an oil and gas lease terminated for failure to pay rental on time as required by sec. 31 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 188(b) (1970), where 20 minutes before the State Office closes to the public on the last day on which rental can be paid, petitioner instructs by telephone an agent who lives in the vicinity of the State Office to make the payment and the agent who alleges she was delayed by traffic

APPLICATIONS AND ENTRIES--Continued

FILING--Continued

and security measures makes payment after the office is closed to the public. In such circumstances the petitioner has not shown that his failure to pay the rental on or before the anniversary date of the lease was justifiable or not due to a lack of reasonable diligence.

Bob Burch, 32 IBLA 93 (Sept. 12, 1977)

Where a party is not the sole party in interest in applications for prospecting permits, his applications must be rejected under 43 CFR 3511.2-4(a)(7) if they do not comply with the mandatory provisions of 43 CFR 3502.7, which require submission of statements of all parties' respective interests and of any agreement between them, and submission of evidence of the qualifications of all parties to hold prospecting permits.

Where a party files applications for prospecting permits as an attorney-in-fact of another party, he must disclose his status as an agent by designating his principal as the "applicant" on the application forms, and must, under 43 CFR 3502.3-1 and 3502.6-1(a), file statements of qualifications for both himself and his principal, as well as a copy of the agreement establishing his power of attorney, or his applications must be rejected under 43 CFR 3511.2-4(a)(7).

Willadean Patton, Essex Minerals, Inc., National Bulk Carriers, Inc., 32 IBLA 350 (Oct. 21, 1977)

PRIORITY

An over-the-counter oil and gas lease offer, properly rejected because it failed to meet the requirements of the regulations, may be considered as having priority as of the date the defect is cured where the curative action was taken during an appeal from the rejection of the offer.

Emerald Oil Co., 31 IBLA 119 (June 24, 1977)

VALID EXISTING RIGHTS

A pending noncompetitive oil and gas lease offer is not a valid existing right protected by the savings clause in the Alaska Native Claims Settlement Act.

Neither the filing of an over-the-counter oil and gas lease offer, nor the holding of a drawing of simultaneously filed offers to determine the first-qualified offeror, creates any right to a lease or any property rights in the offeror that diminish the Secretary's discretion whether or not to issue a noncompetitive oil and gas lease on a given tract.

James W. Canon, et al., 1 SEC. 1 (Apr. 15, 1977)
84 I.D. 176

APPLICATIONS AND ENTRIES--Continued

VALID EXISTING RIGHTS--Continued

The filing of a petition-application is treated as a petition for classification of the land. The mere filing of the application does not vest in the applicant any interest in the land and repeal of the authorizing statute mandates rejection of the application.

Arthur R. Wallace, 30 IBLA 239 (May 31, 1977)

A petition-application for a homestead entry outside of Alaska requires classification of the land, confers no rights upon an applicant and must be rejected because the Federal Land Policy and Management Act repealed the homestead laws effective on the date of the Act as to lands outside Alaska.

Daniel A. Anderson, 31 IBLA 162 (July 1, 1977)

VESTED RIGHTS

Under 30 U.S.C. § 262 (1970), a valuable deposit of sodium must be leased competitively even though the Geological Survey determination that lands are so known may have been made subsequent to appellant's filing of its application.

Permian Mud Service, Inc., 31 IBLA 150 (June 30, 1977)
84 I.D. 342

The filing of an application for modification of an existing coal lease is a hope or expectancy rather than a vested property right, and, as such, does not fall within a "valid existing rights" exception and is not protected by the Fifth Amendment.

Estate of Malcolm N. McKinnon, 31 IBLA 290 (July 22, 1977)

Gulf Oil Corp., 32 IBLA 13 (Aug. 29, 1977)

APPRAISALS

One challenging the accuracy of an appraisal of water based on fair-market value must show by substantial evidence the nature of the alleged error; where the appraisal has been conducted in accordance with generally accepted appraisal principles, allegations of error unsupported by evidence will be given little weight.

Park Center Water District and The Canon Heights Irrigation and Reservoir Co., 28 IBLA 368 (Feb. 3, 1977)
84 I.D. 87

Where the current fair rental value of a right-of-way has been determined in accordance with accepted appraisal procedures, and the permittee contends that the rental is excessive, the burden is upon the lessee to prove by positive, substantial evidence that the appraisal is in error. Where the lessee fails to do so, the appraisal will stand.

Four States Television, Inc., 32 IBLA 205 (Sept. 19, 1977)

APPRAISALS--Continued

Under 43 CFR 2802.1-7(e), the charge for a right-of-way on public lands may be revised upon compliance with procedural requirements at any time 5 years or more from the date when the rate was initially established.

XYZ Television, Inc., 32 IBLA 317 (Sept. 30, 1977)

An applicant has no right to a hearing in connection with original Federal charges for use and occupancy of a communication site, and in the absence of any specific assertion showing error in the appraisal, the appraisal will be sustained on appeal if it is properly formulated.

When a parcel of land is properly determined to have a highest and best use for communication site purposes, an annual use charge based on the fair-market value of the right-of-way grant may be determined by comparison with value of the right of use for similar sites and by making whatever adjustments may be necessary because of differences in factors influencing value.

XYZ Television, Inc., 33 IBLA 80 (Dec. 8, 1977)

A Bureau of Land Management appraisal from which the annual rental for a special use permit is calculated will be upheld unless the permittee shows by substantial and positive evidence, specific errors in the method or facts on which the appraisal is based.

Evidence that Forest Service land has been appraised at lower values and leased at lower rates than allegedly comparable Bureau of Land Management land will not suffice to overturn the latter's practices where no specific error in its methods has been shown.

Where a permittee introduces an alternative comparative sales analysis in opposition to that of the Bureau of Land Management, he must show by substantial and positive evidence why his analysis is valid and the Bureau of Land Management's invalid. Where the issue rests on the assertion of each party's expert on the validity of his respective analysis and the record fails to contain evidence by which this deadlock can be resolved, the case will be remanded for further factfinding.

Michael S. Deering, 33 IBLA 142 (Dec. 19, 1977)

APPROPRIATIONS

The denial of a private landowner's request that the Bureau of Land Management share in the expenses of constructing a fence between Federal and private land will be upheld where the landowner has failed to show a valid legal or factual reason for granting the request.

John L. Timm and Ruth D. Blomgren, 30 IBLA 317 (June 6, 1977)

BOUNDARIES
(See also Surveys of Public Lands.)

In determining what land is conveyed under patents or grants of public land bordering a meandered watercourse, the general rule is that the waterline itself, not the meander line, constitutes the boundary. There is an exception where the meander line may constitute the boundary between lands omitted from the survey and the watercourse if fraud or gross error is shown in the survey. This exception is only applicable to limit the boundary of the surveyed lots on the side of the watercourse where the omitted land is shown. It does not apply to a lot on the opposite side of the watercourse from the omitted land so as to pass title to the omitted land with title to the lot on the opposite side. The waterline would remain the actual boundary of that lot.

Extrinsic evidence may be used to make definite the description in a private deed which contains a latent ambiguity, either to determine actual or color of title. Therefore, a color of title claimant may introduce extrinsic evidence to establish whether the deeds in her chain of title were based upon plats, records and other documents which can be read together with the deeds as creating a color of title beyond the actual title shown on an official Federal survey plat.

Mable M. Farlow, 30 IBLA 320 (June 7, 1977) 84 I.D. 276

BUREAU OF INDIAN AFFAIRS
(See also Indian Probate.)

ADMINISTRATIVE APPEALS

Generally

All owners of interest in property are "interested parties" within the meaning of 25 CFR 2.11. It was therefore improper for appellant to serve a copy of her notice of appeal only on those persons whom she considered to be "adverse parties."

Notwithstanding that the notice of appeal is to be served on all interested parties, failure to do so does not make dismissal of the appeal mandatory.

Administrative Appeal of Iris Bear Heels v. Aberdeen Area Director, 6 IBIA 253 (Dec. 15, 1977)

BUREAU OF LAND MANAGEMENT
(See also Mineral Leasing Act.)

Where a protest has been made against the validity of a drawing entry card (DEC) in the simultaneous oil and gas lease filing procedure, it is improper to issue a lease in response to the protested DEC before the protest is finally dismissed. The Board of Land Appeals, rather than a BLM State Office, has the authority to make final administrative determinations for the Department in matters relating to protests against oil and gas lease offers.

D. E. Pack, 31 IBLA 283 (July 22, 1977)

BUREAU OF LAND MANAGEMENT--Continued

Until such time as the Department promulgates regulations, policy guidelines or criteria implementing sec. 302 of the Federal Land Policy and Management Act of 1976, the Bureau of Land Management may properly defer action on the proposed creation of an estate in Federal land thereunder.

Treva L. Berger, 31 IBLA 389 (Aug. 19, 1977)

An organization appealing a Bureau of Land Management decision will be considered a "party to a case" within the meaning of 43 CFR 4.410 where the organization uses the lands in question, is recognized as a bona fide representative of the community, receives notice of Bureau actions concerning the lands, actively and extensively participates in the formulation of land use plans for the lands in question, and takes a position in a dispute concerning the use of the land contrary to another group or individual.

Headwaters, 33 IBLA 91 (Dec. 16, 1977)

BUREAU OF RECLAMATION

GENERALLY

Under the Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1970), if the lands embraced within an oil and gas lease application are under surface jurisdiction of a service or bureau within the Department of the Interior, as are the National Park Service and the Bureau of Reclamation, the consent of the Secretary of the Interior is necessary under the Act to the leasing of the land. Where the National Park Service recommends that oil and gas leases for lands within the boundaries of the Chickasaw National Recreation Area be rejected in order to maintain the area for the purposes for which it was established, it is proper to accept this recommendation and reject the offers.

Daphfine Shear, David L. Shear, 29 IBLA 33 (Feb. 10, 1977)

CLASSIFICATION AND MULTIPLE USE ACT OF 1964

Publication in the Federal Register of a notice of proposed classification pursuant to 43 CFR 2461.2 will segregate the affected land to the extent indicated in the notice.

Where mining claims occupy land which has subsequently been withdrawn from the operation of the mining laws by a notice of proposed classification, 43 CFR 2461.2, the validity of the claim must be tested as of the date of the published notice, as well as of the date of determination. If the claim was not supported by such a discovery at the date of the published notice of classification, the land within the claim located in the classified area would not be excepted from the effect of the withdrawal.

United States v. R. E. Rodgers and Barbara J. Rodgers, 32 IBLA 77 (Sept. 2, 1977)

COAL LEASES AND PERMITS

GENERALLY

The Mineral Leasing Act of 1920, as amended and supplemented, most recently by the Coal Leasing Amendments Act of 1975, allows the Secretary to authorize development of coal leases by methods which were not utilized by the industry at the time of passage of the 1920 Act. The broad grants of authority to the Secretary in the 1920 Act allow technological developments in the coal mining industry.

The grant of the privilege to mine and dispose of all coal includes in situ methods of development.

In Situ Gasification of Coal, M-36890 (May 24, 1977) 84 I.D. 244

The Federal Coal Leasing Amendments Act of 1975, which amended sec. 2(b) of the Mineral Leasing Act, subject to "valid existing rights" terminated the Secretary's authority to extend previously granted prospecting permits.

Authority to Extend Coal Prospecting Permits: Effect of Sec. 4 of the Federal Coal Leasing Amendments Act of 1975, M-36894 (July 21, 1977) 84 I.D. 415

A mining plan submitted to the U.S. Geological Survey is properly classified a "new operation" as defined by 30 CFR 211.1(d)(1)(iii) where as of the date of its submission to the Department, the Department has not completed its environmental impact analysis involving the area in which the mining plan is located, nor has it, as of that date, commenced and expended substantial resources in the preparation or completion of that analysis.

Routt County Development, Ltd., 33 IBLA 130 (Dec. 19, 1977)

APPLICATIONS

An application for modification of an existing coal lease to include an entire section is properly rejected under sec. 3 of the Mineral Leasing Act, since it seeks to add more than the 160-acre maximum allowed thereunder, notwithstanding the fact that the application was filed prior to the enactment of this acreage limitation.

The filing of an application for modification of an existing coal lease is a hope or expectancy rather than a vested property right, and, as such, does not fall within a "valid existing rights" exception and is not protected by the Fifth Amendment.

Estate of Malcolm N. McKinnon, 31 IBLA 290 (July 22, 1977)

An application for modification of an existing coal lease to include an additional 361.52 acres is properly rejected under sec. 3 of the Mineral Leasing Act, since it seeks to add more than the 160-acre maximum allowed

COAL LEASES AND PERMITS--Continued

APPLICATIONS--Continued

thereunder, notwithstanding the fact that the application was filed prior to the enactment of this acreage limitation.

The filing of an application for modification of an existing coal lease is a hope or expectancy rather than a vested property right, and, as such, does not fall within a "valid existing rights" exception and is not protected by the Fifth Amendment.

Gulf Oil Corp., 32 IBLA 13 (Aug. 29, 1977)

An application for modification of a coal lease which exceeds the acreage limitation provided by the Federal Coal Leasing Amendments Act of 1975 is properly rejected notwithstanding the fact that the application was filed prior to enactment of the amendment.

The filing of an application for modification of an existing coal lease does not give rise to a vested property right. Thus, such an application qualifies as neither a valid existing right excepted from application of the acreage limit on lease modifications set by the Federal Coal Leasing Amendments Act of 1975 nor a right protected by the Fifth Amendment from application of subsequently amended statutes or regulations.

Nevada Electric Investment Co., 33 IBLA 3 (Nov. 14, 1977)

LEASES

The grant of the privilege to mine and dispose of all coal includes in situ methods of development.

In Situ Gasification of Coal, M-36890 (May 24, 1977) 84 I.D. 244

An application for modification of an existing coal lease to include an entire section is properly rejected under sec. 3 of the Mineral Leasing Act, since it seeks to add more than the 160-acre maximum allowed thereunder, notwithstanding the fact that the application was filed prior to the enactment of this acreage limitation.

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Estate of Malcolm N. McKinnon, 31 IBLA 290 (July 22, 1977)

An application for modification of an existing coal lease to include an additional 361.52 acres is properly rejected under sec. 3 of the Mineral Leasing Act, since it seeks to add more than the 160-acre maximum allowed thereunder, notwithstanding the fact that the application was filed prior to the enactment of this acreage limitation.

The filing of an application for modification of an existing coal lease is a hope or expectancy rather than a vested property right, and, as such, does not fall

COAL LEASES AND PERMITS--Continued

LEASES--Continued

within a "valid existing rights" exception and is not protected by the Fifth Amendment.

Gulf Oil Corp., 32 IBLA 13 (Aug. 29, 1977)

Where an application to amend a coal lease describes 480 acres, a permissible acreage when the application was filed, but the pertinent statute and the regulations in 43 CFR 3524.2-1(a) are amended to provide for modifications of existing coal leases including contiguous coal lands if the total area of such modifications does not exceed 160 acres or the same number of acres as that in the original lease, whichever is less, the application for 480 acres cannot be allowed, but the applicant will be given an opportunity to amend his application so as to cover no more than 160 acres.

Intermountain Exploration Co., 32 IBLA 170 (Sept. 13, 1977)

An application for modification of a coal lease which exceeds the acreage limitation provided by the Federal Coal Leasing Amendments Act of 1975 is properly rejected notwithstanding the fact that the application was filed prior to enactment of the amendment.

The filing of an application for modification of an existing coal lease does not give rise to a vested property right. Thus, such an application qualifies as neither a valid existing right excepted from application of the acreage limit on lease modifications set by the Federal Coal Leasing Amendments Act of 1975 nor a right protected by the Fifth Amendment from application of subsequently amended statutes or regulations.

Nevada Electric Investment Co., 33 IBLA 3 (Nov. 14, 1977)

Under 43 CFR 3522.2-1(a), a proposed readjustment of a coal lease should not be appealed directly to the Board of Land Appeals under 43 CFR 4.410, but, rather, a lessee's objections thereto should first be referred to and acted upon by the State Office, Bureau of Land Management.

California Portland Cement Co., 33 IBLA 223 (Dec. 28, 1977)

PERMITS

Generally

The Federal Coal Leasing Amendments Act of 1975, which amended sec. 2(b) of the Mineral Leasing Act, subject to "valid existing rights" terminated the Secretary's authority to extend previously granted prospecting permits.

Authority to Extend Coal Prospecting Permits: Effect of Sec. 4 of the Federal Coal Leasing Amendments Act of 1975, M-36894 (July 21, 1977) 84 I.D. 415

COAL LEASES AND PERMITS--Continued

PERMITS--Continued

Generally--Continued

A prospecting permit for coal cannot be issued for land subject to a claim. If a prospecting permit for coal purports to cover land subject to a mining claim, it is invalid as to that land. Consequently, in demonstrating a discovery of coal in commercial quantities in land subject to a prospecting permit, the permittee must exclude coal in land covered by a mining claim.

The Effect of Mining Claims on Secretarial Authority to Issue Prospecting Permits for Coal and Phosphate, M-36893 (Aug. 2, 1977) 84 I.D. 442

ROYALTIES

In determining the amount of royalty due to the United States under a Federal coal lease, it is proper for Geological Survey to include as part of the value basis for the purposes of computing such royalty the amount of any reimbursed State severance tax.

Knife River Coal Mining Co., 29 IBLA 26 (Feb. 8, 1977)

Royalty provisions, which do not specifically mention in situ development, are applicable to such development. The Secretary, through the Geological Survey, is empowered to promulgate by regulation a conversion ratio of in situ extraction to coal expended in order to determine the royalty due.

In Situ Gasification of Coal, M-36890 (May 24, 1977) 84 I.D. 244

COAL RESEARCH AND DEVELOPMENT

A mining plan submitted to the U.S. Geological Survey is properly classified a "new operation" as defined by 30 CFR 211.1(d)(1)(iii) where as of the date of its submission to the Department, the Department has not completed its environmental impact analysis involving the area in which the mining plan is located, nor has it, as of that date, commenced and expended substantial resources in the preparation or completion of that analysis.

Routt County Development, Ltd., 33 IBLA 130 (Dec. 19, 1977)

COLOR OR CLAIM OF TITLE

GENERALLY

The granting of a class 2 color of title application is committed by statute to the discretion of the Secretary of the Interior. Where the public interest in retaining land embraced in such a claim in public ownership for recreational purposes outweighs any equities that the applicant has in the land, rejection of the application

COLOR OR CLAIM OF TITLE--Continued

GENERALLY--Continued

in the exercise of that discretion will be affirmed on appeal.

Gladys Lomax, 29 IBLA 146 (Mar. 4, 1977)

A claim or color of title must be based on a document or documents, from a source other than the United States, which on their face purport to convey title to the land applied for, but which is not good title. The mere mistaken belief that the land applied for was included in the description set forth in the claimant's deed is insufficient to establish a claim or color of title.

The obligation for proving a valid color of title claim is upon the claimant. Where a claimant has alleged facts which, if proved, may establish her color of title, the Board of Land Appeals may order a fact-finding hearing pursuant to 43 CFR 4.415.

Mable M. Farlow, 30 IBLA 320 (June 7, 1977) 84 I.D. 276

Since land which falls within an exception to a proclamation withdrawing land for Federal purposes, is not then withdrawn, the withdrawal does not preclude the initiation and perfection of a claim under the Color of Title Act on land excepted from the withdrawal. 43 U.S.C. § 1068 (1970).

Benton C. Cavin, 31 IBLA 145 (June 30, 1977)

A color of title claim stemming from a tax sale by a State in 1900 to a color of title applicant's predecessor in interest on which taxes have since been paid is an adverse claim sufficient to warrant the Department in not setting aside an 1853 decision erroneously rejecting a swampland selection or from not giving a new State selection priority over the color of title application.

John Stuart Hunt, Sherman M. Hunt, 31 IBLA 304 (July 22, 1977) 84 I.D. 421

In order for a State to receive legal title to a swampland selection, the Secretary of the Interior or his delegate must determine that the land is swamp in character and available for disposition under the grant. An erroneous decision that selected land is unavailable because it was sold prior to the selection is valid and binding until set aside. The erroneous decision will not be set aside where the State did not appeal and the decision has remained unchallenged for over 100 years, the State itself sold the land at a tax sale to the predecessor in interest of a color of title applicant, and an adverse right, i.e., a class 2 color of title application, has intervened.

White Castle Lumber and Shingle Co., Ltd., 32 IBLA 129 (Sept. 12, 1977)

COLOR OR CLAIM OF TITLE--Continued

GENERALLY--Continued

Where an applicant under the Color of Title Act applied for a grazing lease for the lands he now seeks to acquire via color of title prior to the time of his acquisition of putative title, he has not demonstrated good faith and his application is properly rejected.

An applicant who believes or has reason to believe that title to land is in the United States at the time when he acquires it from his predecessor in interest does not hold color or title in good faith.

The possession of ancestors of the grantors may be tacked on to satisfy the statutory period; however, if the ancestors' possession is not in good faith, the chain of title has been broken, the holding period of the ancestors may not be tacked on and the statutory period begins to run anew.

The obligation to establish a valid color of title claim is upon the claimant. Where a claimant has alleged facts which, if proved, may establish his color of title, the Board of Land Appeals may order a fact-finding hearing pursuant to 43 CFR 4.415.

Joe I. and Celina V. Sanchez, et al., 32 IBLA 228 (Sept. 20, 1977)

In order to establish the adverse possession required for a class 1 color of title claim, a claimant must establish that he and his predecessors in title were in actual, exclusive, continuous, open, and notorious possession of the land for 20 years.

The obligation to establish a valid color of title claim is upon the claimant. Where a claimant has alleged facts which, if proved, may establish his color of title, the Board of Land Appeals may order a fact-finding hearing pursuant to 43 CFR 4.415.

Lawrence E. Willmorth, 32 IBLA 378 (Nov. 1, 1977)

Color or claim of title to Federal land requires an instrument which, on its face, purports to convey the tract in question.

Joe Stewart, 33 IBLA 225 (Dec. 28, 1977)

ADVERSE POSSESSION

In order to establish the adverse possession required for a class 1 color of title claim, a claimant must establish that he and his predecessors in title were in actual, exclusive, continuous, open, and notorious possession of the land for 20 years.

Lawrence E. Willmorth, 32 IBLA 378 (Nov. 1, 1977)

APPLICATIONS

Where an applicant under the Color of Title Act applied for a grazing lease for the lands he now seeks to

COLOR OR CLAIM OF TITLE--Continued

APPLICATIONS--Continued

acquire via color of title prior to the time of his acquisition of putative title, he has not demonstrated good faith and his application is properly rejected.

An applicant who believes or has reason to believe that title to land is in the United States at the time when he acquires it from his predecessor in interest does not hold color or title in good faith.

The possession of ancestors of the grantors may be tacked on to satisfy the statutory period; however, if the ancestors' possession is not in good faith, the chain of title has been broken, the holding period of the ancestors may not be tacked on and the statutory period begins to run anew.

Joe I. and Celina V. Sanchez, et al., 32 IBLA 228 (Sept. 20, 1977)

DESCRIPTION OF LAND

Extrinsic evidence may be used to make definite the description in a private deed which contains a latent ambiguity, either to determine actual or color of title. Therefore, a color of title claimant may introduce extrinsic evidence to establish whether the deeds in her chain of title were based upon plats, records and other documents which can be read together with the deeds as creating a color of title beyond the actual title shown on an official Federal survey plat.

Mable M. Farlow, 30 IBLA 320 (June 7, 1977) 84 I.D. 276

GOOD FAITH

The requirement of good faith contained in the Color of Title Act necessitates establishing the 20-year period of possession under claim or color of title prior to the time the claimant learned of the defect in her purported title. If this requires counting years during which the claimant's predecessors in interest held the land, their good faith must also be established.

Mable M. Farlow, 30 IBLA 320 (June 7, 1977) 84 I.D. 276

Where an applicant under the Color of Title Act applied for a grazing lease for the lands he now seeks to acquire via color of title prior to the time of his acquisition of putative title, he has not demonstrated good faith and his application is properly rejected.

An applicant who believes or has reason to believe that title to land is in the United States at the time when he acquires it from his predecessor in interest does not hold color or title in good faith.

The possession of ancestors of the grantors may be tacked on to satisfy the statutory period; however, if the ancestors' possession is not in good faith, the chain of title has been broken, the holding period of the ancestors may not be tacked on and the statutory period begins to run anew.

Joe I. and Celina V. Sanchez, et al., 32 IBLA 228 (Sept. 20, 1977)

COLOR OR CLAIM OF TITLE--Continued

GOOD FAITH--Continued

A 20-year period of good faith adverse possession immediately prior to the time claimant learned of the defect in his purported title is a requirement of a class 1 color of title claim. Good faith requires an honest belief by claimant that the land was owned by him and the Department may consider whether such belief was unreasonable in the light of the facts then actually known to claimant. Although a period of possession by claimant's predecessors in title may be tacked on to claimant's possession, their good faith must also be established.

Lawrence E. Willmorth, 32 IBLA 378 (Nov. 1, 1977)

Good faith possession under color or claim of title requires that the claimant possess the land without knowing or having reason to know that title to the land was vested in the United States. Where the claimant holds a right-of-way granted by the United States covering the land in question and has received periodic notifications of trespass from Federal officers, there is no good faith possession.

Joe Stewart, 33 IBLA 225 (Dec. 28, 1977)

IMPROVEMENTS

Improvements relied upon to establish a class 1 color of title claim must be present on the land at the time the application is filed and must enhance the value of the land.

Lawrence E. Willmorth, 32 IBLA 378 (Nov. 1, 1977)

COMMUNICATION SITES

An application for a communication site under 43 U.S.C. § 961 (1970) should be denied where utilization of an existing right-of-way is practical under 43 U.S.C. § 1763 (19__) and where the proposed site would have an adverse impact on the environment.

"Practical." Under 43 U.S.C. § 1763 (19__), utilization of a nearby existing communication site is practical where the site is suitable and the expense of utilization would not be unreasonable as compared with environmental damage from a proliferation of sites.

Jicarilla Apache Indian Tribe, 29 IBLA 57 (Feb. 16, 1977)

A right-of-way for a communication site for which application was made under the Act of Mar. 4, 1911, shall conform to the provisions of the Federal Land Policy and Management Act of 1976, sec. 510, 90 Stat. 2743, 2782, when application for grant was pending on Oct. 21, 1976.

Where the current fair rental value of a right-of-way has been determined in accordance with accepted appraisal procedures, and the permittee contends that the rental is excessive, the burden is upon the lessee to

COMMUNICATION SITES--Continued

prove by positive, substantial evidence that the appraisal is in error. Where the lessee fails to do so, the appraisal will stand.

Four States Television, Inc., 32 IBLA 205 (Sept. 19, 1977)

An applicant has no right to a hearing in connection with original Federal charges for use and occupancy of a communication site, and in the absence of any specific assertion showing error in the appraisal, the appraisal will be sustained on appeal if it is properly formulated.

When a parcel of land is properly determined to have a highest and best use for communication site purposes, an annual use charge based on the fair-market value of the right-of-way grant may be determined by comparison with value of the right of use for similar sites and by making whatever adjustments may be necessary because of differences in factors influencing value.

Under sec. 310 of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1764(g) (West Supp. 1977), charges for rights-of-way on public lands are in general to be paid annually rather than in advance for a longer period pursuant to 43 CFR 2802.1-7(a).

XYZ Television, Inc., 33 IBLA 80 (Dec. 8, 1977)

CONSTITUTIONAL LAW

GENERALLY

Pursuant to the Property Clause of the U.S. Const. art. IV, § 3, cl. 2, Congress has enacted the Taylor Grazing Act, 43 U.S.C. § 315 et seq. (1970), and other statutory authority which empower the Secretary of the Interior to define what conduct constitutes a grazing trespass and to determine whether or not an individual has committed a trespass.

There is no constitutional right to a jury trial in an administrative proceeding such as a grazing trespass hearing.

Administrative hearings required in grazing trespass cases are not an unlawful exercise of judicial power and meet constitutional requirements and the standards of the Administrative Procedure Act. The constitutional requirement of due process is not violated merely because an Administrative Law Judge is employed by the Department of the Interior.

Under the Supremacy Clause, U.S. Const., art. VI, cl. 2, Federal laws, including Federal grazing regulations, override conflicting State laws with respect to public lands.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

CONSTITUTIONAL LAW--Continued

DUE PROCESS

The filing of an application for modification of an existing coal lease is a hope or expectancy rather than a vested property right, and, as such, does not fall within a "valid existing rights" exception and is not protected by the Fifth Amendment.

Estate of Malcolm N. McKinnon, 31 IBLA 290 (July 22, 1977)

Gulf Oil Corp., 32 IBLA 13 (Aug. 29, 1977)

The filing of an application for modification of an existing coal lease does not give rise to a vested property right. Thus, such an application qualifies as neither a valid existing right excepted from application of the acreage limit on lease modifications set by the Federal Coal Leasing Amendments Act of 1975 nor a right protected by the Fifth Amendment from application of subsequently amended statutes or regulations.

Nevada Electric Investment Co., 33 IBLA 3 (Nov. 14, 1977)

CONTESTS AND PROTESTS
(See also Rules of Practice.)

GENERALLY

Under the Department of the Interior's rules governing contests against mining claims, where an answer to a complaint is not filed within the prescribed time the allegations of the complaint will be taken as admitted by the contestee and the case decided without a hearing by the appropriate officer of the Bureau of Land Management. A mining claim may be declared null and void where there was a charge in the complaint of insufficient minerals to constitute a valid discovery.

United States v. William C. Smith, a/k/a Bill Smith, 29 IBLA 7 (Feb. 8, 1977)

Where the answer to a mining contest complaint denying the charges is not timely filed, the charges will be deemed admitted and the contest will be decided without a hearing. 43 CFR 4.450-7(a).

United States v. Edison T. Schaefer, 29 IBLA 84 (Feb. 23, 1977)

Under the Department of the Interior's rules governing contests against mining claims, where an answer to a complaint is not filed within the prescribed time the allegations of the complaint will be taken as admitted by the contestee and the case decided without a hearing by the appropriate officer of the Bureau of Land Management. However, under the rules an answer may be accepted if it is received within 10 days after the due date and it is determined that the answer was probably transmitted before the end of the period in which it was required to be filed.

United States v. Jesse Smith, 29 IBLA 10 (Feb. 8, 1977)

CONTESTS AND PROTESTS--Continued

GENERALLY--Continued

A field examination report of a trade and manufacturing site claim is not evidence on which the final action of cancellation may be taken, until such time as the pertinent facts are admitted by the applicant or the report is admitted into evidence at a hearing initiated by a contest complaint.

John B. Coghill, 29 IBLA 177 (Mar. 18, 1977)

The ultimate burden of proof to show a discovery of a valuable mineral deposit is always upon the mining claimant, but if the Government in a contest fails to present a prima facie case and the contestee moves to dismiss the case and rests, the contest complaint must be dismissed because there would be no evidentiary basis for an order of invalidity.

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered; therefore, if evidence presented by contestee shows there has not been a discovery, it may be used in reaching a decision that the claim is invalid regardless of any defects in the prima facie case.

Where the Government has made a prima facie case of lack of discovery in a mining contest, and a mining claimant fails to show discovery by a preponderance of the evidence, he has not satisfied his burden of proof and the claim must be declared invalid.

United States v. Lloyd O'Callaghan, Sr., et al., 29 IBLA 333 (Mar. 31, 1977)

Since a Government contest is not insufficient and subject to dismissal for failure to name all parties in interest, a contest is properly brought against persons who are heirs of a director of a corporation whose charter has expired under State law, even though the State law provides that the property of such a corporation passes to a public trustee for distribution by him. Any interest of those not named or served in a manner provided by the pertinent regulation is not affected.

United States v. Emma Elizabeth Conner, and Walter T. Nolte, as the Heirs of R. W. Speer, a Last Known Director of the Arlington Gold Mining Co. (Contestee), 31 IBLA 173 (July 5, 1977)

In a mining claim contest where a contestee is of the opinion that the Government did not make a prima facie case of no discovery, he may move to have the case dismissed at the conclusion of the Government's case, and then rest. The contest complaint could be dismissed if the Administrative Law Judge rules that no prima facie case had been made of lack of discovery and there is no other evidence in the record to support the charges in the complaint. But if the contestee goes forward after making such a motion to dismiss and presents his evidence, that evidence must be considered as part of the entire record and its probative value will be weighed. Thus, even if the Government has failed to

CONTESTS AND PROTESTS--Continued

GENERALLY--Continued

make a prima facie case, evidence presented by the contestee which supports the Government's contest charges may be used against the contestee, regardless of the defects in the Government's case.

In a proceeding to determine the validity of an unpatented mining claim the claimants must prevail, if at all, upon the strength of their own case, rather than upon any weakness in that of the Government.

United States v. R. E. Rodgers and Barbara J. Rodgers, 32 IBLA 77 (Sept. 2, 1977)

A Bureau of Land Management decision, dismissing an answer to contest complaints filed in behalf of individual contestees and a company, and holding mining claims null and void because it appeared the company did not own the claims and because the answer was filed in behalf of the individual contestees by someone not authorized to practice in their behalf, will be vacated where on appeal it is shown that within the time for filing the answer the claims had been transferred to the company. There is no need to dismiss the contest and initiate a new contest against the company since a timely answer has been filed in its behalf; instead, the complaints should be amended to substitute the company as the contestee and party in interest and the contest proceeding should go forward against it.

Sharon K. Milazzo, et al., 33 IBLA 57 (Dec. 5, 1977)

CONTRACTS
(See also Rules of Practice.)

GENERALLY

A lessee of the water from a well owned by the Federal Government, who agrees that his use of the water will not be used as a basis for obtaining a permanent water right and who nevertheless proceeds to try to obtain a water right in State court based on that use, will be estopped from asserting any resulting decree of the State court for any purpose.

Park Center Water District and The Canon Heights Irrigation and Reservoir Co., 28 IBLA 368 (Feb. 3, 1977)
84 I.D. 87

CONSTRUCTION AND OPERATION

Generally

The royalty provisions of a State lease validated under sec. 6 of the Outer Continental Shelf Lands Act will govern the determination of the royalty due to the United States.

Superior Oil Co., 31 IBLA 127 (June 30, 1977)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Actions of Parties

A second category differing site conditions claim based upon rock encountered in excavation under a construction contract is denied where the Board finds that an adequate site investigation would have revealed the presence of rock in the area where it was encountered.

Appeal of William Lagnion (Contractor), IBCA-1083-10-75 (Jan. 5, 1977)

A default termination is found to be proper where no special circumstances were shown to exist justifying a contractor's refusal to proceed with performance in accordance with the contracting officer's decision pending the resolution of the dispute.

Appeals of Willie H. Petterson, IBCA-1115-7-76, IBCA-1116-7-76, IBCA-1117-7-76 and IBCA-1118-7-76 (Feb. 28, 1977)

Interpretation of the parties prior to dispute has great weight and compels conclusion that force account work included placing red dirt fill but not drying and replacing. Drying or replacement of wet borrow was not force account work and was not covered by the changes clause or changed conditions clause.

The Government failed to show that a rejected wall did not conform to the plans and specifications.

Appeal of Rocky Mountain Construction Co., IBCA-1091-12-75 (Aug. 17, 1977) 84 I.D. 829

When the project supervisor for the Government takes over the direction and supervision of the contractor's work as to concrete curbing and gunite application, the Government cannot complain of defective work and require contractor to replace the work at contractor's expense.

Appeal of Murdock Construction Co., IBCA-1050-12-74 (Aug. 29, 1977)

A first category differing site condition claim based upon excessive rock encountered in excavation under a construction contract is sustained where the Board finds there was an adequate pre-bid site investigation and that the contract indications of subsurface conditions did not reveal the excessive quantities of rock in the areas where it was encountered.

A first category differing site condition claim based upon mitigating subsurface water and rock excavation encountered is sustained where the Board found that the Government knew of the subsurface mitigating water but failed to disclose such information to bidders and that both the rock and the subsurface mitigating water encountered differed materially from the contract indications.

Appeals of JB&C Co., IBCA-1020-2-74 and IBCA-1033-4-74 (Sept. 28, 1977) 84 I.D. 495

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Allowable Costs

Upon reconsideration, the Board finds that where the Government issues an "Extra Work Order" under a "force account" provision for minor extra work not provided for in other pay items, at agreed on rates, the contractor is entitled to be paid for inefficiency, rework costs and delay costs when moisture causes borrow material placed under the extra work order, to become muddy. However, the appellant's failure to give prompt notice of the claim under the force account provision caused the Government to order added pay item work, thus the claim must be reduced by the amount of added pay item payment.

Appeal of Rocky Mountain Construction Co., IBCA-1091-12-75 (Nov. 4, 1977) 84 I.D. 898

When the contract provides payment for the rental of specific equipment and contractor fails to rent this equipment, the Government's failure to pay for this item is not a constructive change.

Appeal of Underground Utility Services, IBCA-1047-11-74, IBCA-1089-11-75 (Dec. 28, 1977)

Changed Conditions (Differing Site Conditions)

Interpretation of the parties prior to dispute has great weight and compels conclusion that force account work included placing red dirt fill but not drying and replacing. Drying or replacement of wet borrow was not force account work and was not covered by the changes clause or changed conditions clause.

Appeal of Rocky Mountain Construction Co., IBCA-1091-12-75 (Aug. 17, 1977) 84 I.D. 829

Changes and Extras

A claim for extra work is denied where the appellant does not even undertake to show why the work was considered to be beyond the requirements of the contract.

Appeals of Willie H. Petterson, IBCA-1115-7-76, IBCA-1116-7-76, IBCA-1117-7-76 and IBCA-1118-7-76 (Feb. 28, 1977)

When contractor unilaterally performs work not required by the contract nor at the direction of the Government, it is not entitled to an equitable adjustment.

Appeal of Halvorson-Lents (A Joint Venture), IBCA-1059-2-75 (Mar. 3, 1977)

The Government's motion to dismiss an appeal because of the failure of the contractor to give the 20-day written notice required by the Changes clause is denied, where the Board finds that there was timely notice with respect to some of the costs on which the claim is based and that the hearing to be held may show that some or all of the remaining costs fall within other

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changes and Extras--Continued

recognized exceptions to the strict application of the 20-day cost-limitation provision.

Appeal of Hartford Accident and Indemnity Co., IBCA-1139-1-77 (June 23, 1977) 84 I.D. 296

An allegation by the contractor that it was "required" to accept an amount smaller than its invoice for a change in order to avoid assessment of liquidated damages was not sustained where the contractor failed to prove (1) that it involuntarily accepted the Government's terms, (2) that the circumstances permitted no alternative and (3) that the circumstances were the result of coercive acts of the Government.

Appeal of Great Eastern Enterprises Corp., IBCA-1113-7-76 (July 15, 1977)

Interpretation of the parties prior to dispute has great weight and compels conclusion that force account work included placing red dirt fill but not drying and replacing. Drying or replacement of wet borrow was not force account work and was not covered by the changes clause or changed conditions clause.

An order to build a curved wall was a constructive change outside change order #1 which was for a straight wall. Thus, the claim for extra costs for curved construction and for stand-by time caused by the Government delay in staking wall is compensable.

Claimant has the burden of proof of extra work and failed to establish that in placing utility lines the actual work performed differed from contractually required work.

Appeal of Rocky Mountain Construction Co., IBCA-1091-12-75 (Aug. 17, 1977) 84 I.D. 829

When the project supervisor for the Government takes over the direction and supervision of the contractor's work as to concrete curbing and gunite application, the Government cannot complain of defective work and require contractor to replace the work at contractor's expense.

When the specifications are defective as to the grout mixture and the Government changes the mixture but the specifications are still defective, the contractor cannot be held liable for defective results in its work.

Contractor has a right to rely upon the accuracy of land profiles in the drawings to prepare its bid and if the land profile is not accurate, necessitating additional excavation, contractor is entitled to recover its additional cost.

Appeal of Murdock Construction Co., IBCA-1050-12-74 (Aug. 29, 1977)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changes and Extras--Continued

Where the contract required separated excavation and stockpiling of topsoil and the restoration of rights-of-way as near as practicable to pre-existing conditions, claims for complying with the Government's directions to strip 12 feet in width on one side of the trench to store unsuitable material other than topsoil and to handpick rocks from the covered trench are sustained because the directed work was beyond what was necessary to satisfy the contract requirements and constituted a constructive change.

Appeals of JB&C Co., IBCA-1020-2-74 and IBCA-1033-4-74 (Sept. 28, 1977) 84 I.D. 495

When the contract requires the pipe to be laid in a trench 18 inches in depth measured from the center line of the pipe to the top of the ground line or on top of the ground with 18 inches of cover if rock strata is encountered, the contractor cannot sustain an allegation of a constructive change when the Government insists the requirements be followed and objects to contractor laying the pipe in a trench less than 18 inches in depth.

Appeal of Underground Utility Services, IBCA-1047-11-74, IBCA-1089-11-75 (Dec. 28, 1977)

Construction against Drafter

Where the contract required hand planing of the top surface of the flooring to remove machine marks and the contractor hand planed only those areas where machine marks were present, the Government was not entitled to require hand planing of areas where machine marks were not present since, as drafter of the specification, the Government could have required hand planing of the entire surface but did not.

Appeal of Great Eastern Enterprises Corp., IBCA-1113-7-76 (July 15, 1977)

When the contractor's interpretation of the contractual clauses is reasonable the Government cannot impose its own interpretation, since the Government, as the drafter, could have been explicit in conveying its intent but failed to do so.

Appeal of Commonwealth Electric Co., IBCA-1048-11-74 (July 15, 1977) 84 I.D. 407

Contract Clauses

When contractor unilaterally performs work not required by the contract nor at the direction of the Government, it is not entitled to an equitable adjustment.

Appeal of Halvorson-Lents (A Joint Venture), IBCA-1059-2-75 (Mar. 3, 1977)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Contract Clauses--Continued

Where a transformer failed shortly after being placed in service and the contractor acted promptly after notice to return the transformer to the factory for repairs at no cost to the Government, the Board held that the Government could not invoke provisions of the inspection clause of the contract relating solely to correction of defects at the point of installation to charge the contractor with the costs of removing and reinstalling the transformer.

Appeal of Trayer Engineering Corp., IBCA-1100-3-76 (Mar. 31, 1977) 84 I.D. 164

Upon reconsideration, the Board finds that where the Government issues an "Extra Work Order" under a "force account" provision for minor extra work not provided for in other pay items, at agreed on rates, the contractor is entitled to be paid for inefficiency, rework costs and delay costs when moisture causes borrow material placed under the extra work order, to become muddy. However, the appellant's failure to give prompt notice of the claim under the force account provision caused the Government to order added pay item work, thus the claim must be reduced by the amount of added pay item payment.

Appeal of Rocky Mountain Construction Co., IBCA-1091-12-75 (Nov. 4, 1977) 84 I.D. 898

When the contract requires the pipe to be laid in a trench 18 inches in depth measured from the center line of the pipe to the top of the ground line or on top of the ground with 18 inches of cover if rock strata is encountered, the contractor cannot sustain an allegation of a constructive change when the Government insists the requirements be followed and objects to contractor laying the pipe in a trench less than 18 inches in depth.

Appeal of Underground Utility Services, IBCA-1047-11-74, IBCA-1089-11-75 (Dec. 28, 1977)

Contracting Officer

Motions to add four claims were granted in part and denied in part on the basis of the Board's findings that the contracting officer had or had not had a reasonable time within which to decide the specific claim.

Appeal of W. F. Sigler & Associates, IBCA-1159-7-77 (Sept. 27, 1977) 84 I.D. 483

Contractor

When the contract requires contractor to furnish all labor and equipment to perform all necessary operations, contractor has a duty to provide appropriate equipment to accomplish the work.

Appeal of Underground Utility Services, IBCA-1047-11-74, IBCA-1089-11-75 (Dec. 28, 1977)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Differing Site Conditions (Changed Conditions)

A second category differing site conditions claim based upon rock encountered in excavation under a construction contract is denied where the Board finds that an adequate site investigation would have revealed the presence of rock in the area where it was encountered.

A first category differing site conditions claim based on the encountering of subsurface waterlines not shown on the contract drawings in the vicinity of a fish hatchery building is denied, where the Board finds that except for the unsupported allegations of the contractor there is nothing in the record to indicate that the experienced subcontractor who performed required excavation in the area where the buried waterlines were located failed to anticipate the conditions he actually encountered.

Although a first category differing site conditions claim is established by the presence of a septic tank in an area where the plans indicate a sewage treatment plant was slated to go, a contractor's claim based thereon is denied where the evidence shows that the location of the sewage treatment plant was changed before any significant amount of work was done in the area where the septic tank was located.

Appeal of William Lagnion (Contractor), IBCA-1083-10-75 (Jan. 5, 1977)

Encountering substantial numbers of granite slabs at a construction site in downtown Philadelphia (when the contract documents and site report indicated the area consisted of buildings razed and covered during a prior period) did not constitute a differing site condition.

Appeal of J. J. White, Inc., IBCA-1131-11-76 (Aug. 25, 1977)

A first category differing site condition claim based upon excessive rock encountered in excavation under a construction contract is sustained where the Board finds there was an adequate pre-bid site investigation and that the contract indications of subsurface conditions did not reveal the excessive quantities of rock in the areas where it was encountered.

A first category differing site condition claim based upon mitigating subsurface water and rock excavation encountered is sustained where the Board found that the Government knew of the subsurface mitigating water but failed to disclose such information to bidders and that both the rock and the subsurface mitigating water encountered differed materially from the contract indications.

Appeals of JB&C Co., IBCA-1020-2-74 and IBCA-1033-4-74 (Sept. 28, 1977) 84 I.D. 495

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Drawings and Specifications

The Government failed to show that a rejected wall did not conform to the plans and specifications.

Claimant has the burden of proof of extra work and failed to establish that in placing utility lines the actual work performed differed from contractually required work.

Appeal of Rocky Mountain Construction Co., IBCA-1091-12-75 (Aug. 17, 1977) 84 I.D. 829

When the specifications are defective as to the grout mixture and the Government changes the mixture but the specifications are still defective, the contractor cannot be held liable for defective results in its work.

Contractor has a right to rely upon the accuracy of land profiles in the drawings to prepare its bid and if the land profile is not accurate, necessitating additional excavation, contractor is entitled to recover its additional cost.

Appeal of Murdock Construction Co., IBCA-1050-12-74 (Aug. 29, 1977)

When the contract requires the pipe to be laid in a trench 18 inches in depth measured from the center line of the pipe to the top of the ground line or on top of the ground with 18 inches of cover if rock strata is encountered, the contractor cannot sustain an allegation of a constructive change when the Government insists the requirements be followed and objects to contractor laying the pipe in a trench less than 18 inches in depth.

Appeal of Underground Utility Services, IBCA-1047-11-74, IBCA-1089-11-75 (Dec. 28, 1977)

Estimated Quantities

A summary of estimated quantities is a guide as to amounts of work to be increased or decreased.

Appeal of Halvorson-Lents (A Joint Venture), IBCA-1059-2-75 (Mar. 3, 1977)

General Rules of Construction

The rules of construction applicable to Government contracts are the same rules applied to contracts between private parties.

Tomco, Inc., 29 IBLA 298 (Mar. 30, 1977)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

General Rules of Construction--Continued

When the contractor's interpretation of the contractual clauses is reasonable the Government cannot impose its own interpretation, since the Government, as the drafter, could have been explicit in conveying its intent but failed to do so.

Appeal of Commonwealth Electric Co., IBCA-1048-11-74 (July 15, 1977) 84 I.D. 407

An allegation by the contractor that it was "required" to accept an amount smaller than its invoice for a change in order to avoid assessment of liquidated damages was not sustained where the contractor failed to prove (1) that it involuntarily accepted the Government's terms, (2) that the circumstances permitted no alternative and (3) that the circumstances were the result of coercive acts of the Government.

Where the contract required hand planing of the top surface of the flooring to remove machine marks and the contractor hand planed only those areas where machine marks were present, the Government was not entitled to require hand planing of areas where machine marks were not present since, as drafter of the specification, the Government could have required hand planing of the entire surface but did not.

Appeal of Great Eastern Enterprises Corp., IBCA-1113-7-76 (July 15, 1977)

Where the contract required separated excavation and stockpiling of topsoil and the restoration of rights-of-way as near as practicable to pre-existing conditions, claims for complying with the Government's directions to strip 12 feet in width on one side of the trench to store unsuitable material other than topsoil and to handpick rocks from the covered trench are sustained because the directed work was beyond what was necessary to satisfy the contract requirements and constituted a constructive change.

Appeals of JB&C Co., IBCA-1020-2-74 and IBCA-1033-4-74 (Sept. 28, 1977) 84 I.D. 495

Intent of Parties

Usage and custom in the trade may be proved to aid in interpretation of the contract between parties, and can add words the parties have not expressed. However, the purpose of such proof is to give effect to the intention of the parties.

Tomco, Inc., 29 IBLA 298 (Mar. 30, 1977)

Notices

When appellant can show that failure to give timely written notice was not prejudicial to Government's interest, appellant is not estopped from prosecuting an appeal.

Appeal of Halvorson-Lents (A Joint Venture), IBCA-1059-2-75 (Mar. 3, 1977)

An appeal is dismissed where the prime contractor has stated that nothing will be done to further an appeal taken by a subcontractor in its own name and the Board finds that the action of the prime contractor in giving the Government written notice of a potential claim of changed conditions by the subcontractor and any statements made by the prime contractor endorsing the potential claim at the time such notice was given are not a sufficient basis upon which to ground jurisdiction over the appeal.

Appeal of Divide Constructors, Inc., Subcontractor to Granite Construction Co., IBCA-1134-12-76 (Mar. 29, 1977) 84 I.D. 119

Where a transformer failed shortly after being placed in service and the contractor acted promptly after notice to return the transformer to the factory for repairs at no cost to the Government, the Board held that the Government could not invoke provisions of the inspection clause of the contract relating solely to correction of defects at the point of installation to charge the contractor with the costs of removing and reinstalling the transformer.

Appeal of Trayer Engineering Corp., IBCA-1100-3-76 (Mar. 31, 1977) 84 I.D. 164

The 20-day notice provision of the changes clause is found inapplicable when the Board finds numerous survey errors were the principal cause of most of the costs claimed and that such errors came within the defective specification exception to the notice requirement of the changes clause.

Appeal of H. M. Byars Construction Co., and Nevada Paving, Inc. (Joint Venture), IBCA-1098-2-76 (June 7, 1977) 84 I.D. 260

The Government's motion to dismiss an appeal because of the failure of the contractor to give the 20-day written notice required by the Changes clause is denied, where the Board finds that there was timely notice with respect to some of the costs on which the claim is based and that the hearing to be held may show that some or all of the remaining costs fall within other recognized exceptions to the strict application of the 20-day cost-limitation provision.

Appeal of Hartford Accident and Indemnity Co., IBCA-1139-1-77 (June 23, 1977) 84 I.D. 296

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Payments

Failure to pay subcontractors, suppliers and employees on time and thereby causing delays does not constitute an excusable cause of delay justifying an extension of time.

Appeal of Scona, Inc., IBCA-1094-1-76 (May 6, 1977)

When contractor fails to prove sufficient work was performed in an acceptable manner to entitle it to progress payments, failure to make such payments by the Government does not constitute a constructive change.

Appeal of Underground Utility Services, IBCA-1047-11-74, IBCA-1089-11-75 (Dec. 28, 1977)

Privity of Contract

An appeal taken by a subcontractor in its own name is dismissed where the Board finds the subcontractor has no standing to invoke the provisions of the Disputes Clause as a means of securing an adjudication by the Board of the rights and obligations of the contesting parties.

An appeal is dismissed where the prime contractor has stated that nothing will be done to further an appeal taken by a subcontractor in its own name and the Board finds that the action of the prime contractor in giving the Government written notice of a potential claim of changed conditions by the subcontractor and any statements made by the prime contractor endorsing the potential claim at the time such notice was given are not a sufficient basis upon which to ground jurisdiction over the appeal.

Appeal of Divide Constructors, Inc., Subcontractor to Granite Construction Co., IBCA-1134-12-76 (Mar. 29, 1977) 84 I.D. 119

Subcontractors and Suppliers

A first category differing site conditions claim based on the encountering of subsurface waterlines not shown on the contract drawings in the vicinity of a fish hatchery building is denied, where the Board finds that except for the unsupported allegations of the contractor there is nothing in the record to indicate that the experienced subcontractor who performed required excavation in the area where the buried waterlines were located failed to anticipate the conditions he actually encountered.

Appeal of William Lagnion (Contractor), IBCA-1083-10-75 (Jan. 5, 1977)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Subcontractors and Suppliers--Continued

An appeal taken by a subcontractor in its own name is dismissed where the Board finds the subcontractor has no standing to invoke the provisions of the Disputes Clause as a means of securing an adjudication by the Board of the rights and obligations of the contesting parties.

An appeal is dismissed where the prime contractor has stated that nothing will be done to further an appeal taken by a subcontractor in its own name and the Board finds that the action of the prime contractor in giving the Government written notice of a potential claim of changed conditions by the subcontractor and any statements made by the prime contractor endorsing the potential claim at the time such notice was given are not a sufficient basis upon which to ground jurisdiction over the appeal.

Appeal of Divide Constructors, Inc., Subcontractor to Granite Construction Co., IBCA-1134-12-76 (Mar. 29, 1977) 84 I.D. 119

Failure to pay subcontractors, suppliers and employees on time and thereby causing delays does not constitute an excusable cause of delay justifying an extension of time.

Appeal of Scona, Inc., IBCA-1094-1-76 (May 6, 1977)

Waiver and Estoppel

When appellant can show that failure to give timely written notice was not prejudicial to Government's interest, appellant is not estopped from prosecuting an appeal.

Appeal of Halvorson-Lents (A Joint Venture), IBCA-1059-2-75 (Mar. 3, 1977)

DISPUTES AND REMEDIES

Appeals

Notice of appeal of all issues in a contracting officer's decision puts all the issues contained therein "at issue" before the IBCA until the parties state the issues then in dispute in the Complaint and Answer.

The findings and determinations of the contracting officer which have been appealed become some evidence to be considered and weighed by the Board together with all the other evidence in the record when the appeal is decided by the Board.

Appeal of Scona, Inc., IBCA-1094-1-76 (Dec. 28, 1977) 84 I.D. 1019

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Burden of Proof

A claim for extra work is denied where the appellant does not even undertake to show why the work was considered to be beyond the requirements of the contract.

Appeals of Willie H. Petterson, IBCA-1115-7-76, IBCA-1116-7-76, IBCA-1117-7-76 and IBCA-1118-7-76 (Feb. 28, 1977)

In prosecuting an appeal the burden of proof is upon appellant to establish by credible evidence that it is entitled to an equitable adjustment.

Appeal of Halvorson-Lents (A Joint Venture), IBCA-1059-2-75 (Mar. 3, 1977)

Under a contract requiring contractor to provide all necessary material, equipment and labor, the contractor's admission that it did not have adequate equipment or an efficient work force, as well as a lack of experience in the work required to be performed does not meet the burden of proof to justify an extension of time.

Appeal of Scona, Inc., IBCA-1094-1-76 (May 6, 1977)

The Goverment has the burden of proof that the contractor failed to deliver the goods. The contractor has the burden of proof that its failure was excusable. Where the only evidence of excusability was a letter from the contractor saying that it was delayed by delays in procurement of components and unexpectedly slower rates of system checkout and software debugging, the contractor has not carried its burden of proof of excusability and the appeal is denied.

Appeal of CSP, Inc., IBCA-1137-12-76 (Nov. 10, 1977)
84 I.D. 917

When the contract requires the pipe to be laid in a trench 18 inches in depth measured from the center line of the pipe to the top of the ground line or on top of the ground with 18 inches of cover if rock strata is encountered, the contractor cannot sustain an allegation of a constructive change when the Government insists the requirements be followed and objects to contractor laying the pipe in a trench less than 18 inches in depth.

Appeal of Underground Utility Services, IBCA-1047-11-74, IBCA-1089-11-75 (Dec. 28, 1977)

Damages

Generally

In an instance where a party to a contract claims substantial but not complete performance of the contract to satisfy his obligation he must either complete the

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Damages--Continued

Generally--Continued

job according to specifications or pay the cost of completion.

Tomco, Inc., 29 IBLA 298 (Mar. 30, 1977)

Liquidated Damages

When the Government did not offer any evidence to explain its failure for almost a month to arrange for the relocation of a powerline which was within the right-of-way for construction and the other evidence of record furnished an insufficient basis for determining the portion of the delay for which each party was responsible, liguidated damages could not properly be assessed for delayed performance.

Appeal of Scona, Inc., IBCA-1094-1-76 (May 6, 1977)

Equitable Adjustments

A second category differing site conditions claim based upon rock encountered in excavation under a construction contract is denied where the Board finds that an adeguate site investigation would have revealed the presence of rock in the area where it was encountered.

A first category differing site conditions claim based on the encountering of subsurface waterlines not shown on the contract drawings in the vicinity of a fish hatchery building is denied, where the Board finds that except for the unsupported allegations of the contractor there is nothing in the record to indicate that the experienced subcontractor who performed required excavation in the area where the buried waterlines were located failed to anticipate the conditions he actually encountered.

Although a first category differing site conditions claim is established by the presence of a septic tank in an area where the plans indicate a sewage treatment plant was slated to go, a contractor's claim based thereon is denied where the evidence shows that the location of the sewage treatment plant was changed before any significant amount of work was done in the area where the septic tank was located.

Appeal of William Lagnion (Contractor), IBCA-1083-10-75 (Jan. 5, 1977)

An order to build a curved wall was a constructive change outside change order #1 which was for a straight wall. Thus, the claim for extra costs for curved construction and for stand-by time caused by the Government delay in staking wall is compensable.

Appeal of Rocky Mountain Construction Co., IBCA-1091-12-75 (Aug. 17, 1977)
84 I.D. 829

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Equitable Adjustments--Continued

A first category differing site condition claim based upon excessive rock encountered in excavation under a construction contract is sustained where the Board finds there was an adequate pre-bid site investigation and that the contract indications of subsurface conditions did not reveal the excessive quantities of rock in the areas where it was encountered.

A first category differing site condition claim based upon mitigating subsurface water and rock excavation encountered is sustained where the Board found that the Government knew of the subsurface mitigating water but failed to disclose such information to bidders and that both the rock and the subsurface mitigating water encountered differed materially from the contract indications.

Appeals of JB&C Co., IBCA-1020-2-74 and IBCA-1033-4-74 (Sept. 28, 1977) 84 I.D. 495

Upon reconsideration, the Board finds that where the Government issues an "Extra Work Order" under a "force account" provision for minor extra work not provided for in other pay items, at agreed on rates, the contractor is entitled to be paid for inefficiency, rework costs and delay costs when moisture causes borrow material placed under the extra work order, to become muddy. However, the appellant's failure to give prompt notice of the claim under the force account provision caused the Government to order added pay item work, thus the claim must be reduced by the amount of added pay item payment.

Appeal of Rocky Mountain Construction Co., IBCA-1091-12-75 (Nov. 4, 1977) 84 I.D. 898

Jurisdiction

A contractor's claim for additional costs attributed to the Government's delay in requesting contemplated installation services under a contract calling for the furnishing of governors for hydraulic turbines is dismissed for want of jurisdiction where the Board finds that the claim asserted is not redressable under the Changes clause of Standard Form 32 (Supply Contract) or under the special Suspension of Deliveries (or Services) clause which reserves to the Government the right to suspend services and preserves the contractor's right to make claim therefor but fails to provide that any costs attributable to such suspension shall be recoverable by way of an adjustment to the contract price.

Appeal of Cheston Co., IBCA-1093-1-76 (Nov. 19, 1976) 84 I.D. 924

An appeal taken by a subcontractor in its own name is dismissed where the Board finds the subcontractor has no standing to invoke the provisions of the Disputes Clause as a means of securing an adjudication by the Board of the rights and obligations of the contesting parties.

An appeal is dismissed where the prime contractor has stated that nothing will be done to further an appeal

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Jurisdiction--Continued

taken by a subcontractor in its own name and the Board finds that the action of the prime contractor in giving the Government written notice of a potential claim of changed conditions by the subcontractor and any statements made by the prime contractor endorsing the potential claim at the time such notice was given are not a sufficient basis upon which to ground jurisdiction over the appeal.

Appeal of Divide Constructors, Inc., Subcontractor to Granite Construction Co., IBCA-1134-12-76 (Mar. 29, 1977) 84 I.D. 119

Termination for Default

Generally

A default termination is found to be proper where no special circumstances were shown to exist justifying a contractor's refusal to proceed with performance in accordance with the contracting officer's decision pending the resolution of the dispute.

Appeals of Willie H. Petterson, IBCA-1115-7-76, IBCA-1116-7-76, IBCA-1117-7-76 and IBCA-1118-7-76 (Feb. 28, 1977)

Under a contract requiring contractor to provide all necessary material, equipment and labor, the contractor's admission that it did not have adequate equipment or an efficient work force, as well as a lack of experience in the work required to be performed does not meet the burden of proof to justify an extension of time.

Appeal of Scona, Inc., IBCA-1094-1-76 (May 6, 1977)

When contractor is at fault for failure to perform the contract within the contract period and cannot establish any cause for an excusable delay, the Government is justified in terminating the contract for default.

Appeal of Underground Utility Services, IBCA-1047-11-74, IBCA-1089-11-75 (Dec. 28, 1977)

FORMATION AND VALIDITY

Bid Award

A rejected bid in an outer continental shelf oil and gas lease sale may be reconsidered and accepted when it is in the public interest to do so. The essential elements in allowing such a reconsideration are the fairness and impartiality of the sale toward all bidders. In a situation where a bid was initially rejected as too low for the tract identified in the bid and the bidder immediately requests reconsideration because he intended to bid for a different tract, where the tract number stated in the bid corresponds to the block number of the intended tract, where all other relevant data in the bid corresponds to the intended tract and only to the intended tract, and where no other person submitted a bid

CONTRACTS--Continued

FORMATION AND VALIDITY--Continued

Bid Award--Continued

for the intended tract, it is proper to reconsider the bid to determine if it is in the public interest to accept the bid for the intended tract.

Alaska Oil and Minerals Corp., 29 IBLA 224 (Mar. 23, 1977) 84 I.D. 114

The Bureau of Land Management may not accept a bid in a competitive lease sale where the bid proposes a royalty different from that set out in the lease sale notice.

Lee F. Loeffler, 33 IBLA 18 (Nov. 22, 1977)

Formalities

When a Federal procurement regulation makes an interest clause mandatory and the contract omits the clause, it is incorporated under the Christian doctrine.

Appeal of Commonwealth Electric Co., IBCA-1048-11-74 (July 15, 1977) 84 I.D. 407

PERFORMANCE OR DEFAULT

Acceptance of Performance

When contractor is at fault for failure to perform the contract within the contract period and cannot establish any cause for an excusable delay, the Government is justified in terminating the contract for default.

Appeal of Underground Utility Services, IBCA-1047-11-74, IBCA-1089-11-75 (Dec. 28, 1977)

Compensable Delays

When the Government is obligated to provide the requisite surveying and staking services on a project the contractor is entitled to compensation for delays caused directly by the Government's failure to have sufficient surveying and staking performed or caused directly by erroneous surveying and staking.

Appeal of H. M. Byars Construction Co., and Nevada Paving Inc. (Joint Venture), IBCA-1098-2-76 (June 7, 1977) 84 I.D. 260

An order to build a curved wall was a constructive change outside change order #1 which was for a straight wall. Thus, the claim for extra costs for curved construction and for stand-by time caused by the Government delay in staking wall is compensable.

Appeal of Rocky Mountain Construction Co., IBCA-1091-12-75 (Aug. 17, 1977) 84 I.D. 829

CONTRACTS--Continued

PERFORMANCE OR DEFAULT--Continued

Excusable Delays

While the burden of showing an excusable cause of delay to exist is on the construction contractor, the invoking of this rule presupposes that the Government will leave this responsibility with the contractor, or, if it undertakes to correspond directly with the subcontractors or suppliers concerning delays experienced, it will inform them of the criteria set forth in the contract for establishing an excusable cause of delay.

Appeal of The J. C. Hester Co., Inc., IBCA-1114-7-76 (Jan. 14, 1977)

Failure to pay subcontractors, suppliers and employees on time and thereby causing delays does not constitute an excusable cause of delay justifying an extension of time.

Appeal of Scona, Inc., IBCA-1094-1-76 (May 6, 1977)

Inspection

Where a transformer failed shortly after being placed in service and the contractor acted promptly after notice to return the transformer to the factory for repairs at no cost to the Government, the Board held that the Government could not invoke provisions of the inspection clause of the contract relating solely to correction of defects at the point of installation to charge the contractor with the costs of removing and reinstalling the transformer.

Appeal of Trayer Engineering Corp., IBCA-1100-3-76 (Mar. 31, 1977) 84 I.D. 164

The Government failed to show that a rejected wall did not conform to the plans and specifications.

Appeal of Rocky Mountain Construction Co., IBCA-1091-12-75 (Aug. 17, 1977) 84 I.D. 829

When contractor is at fault for failure to perform the contract within the contract period and cannot establish any cause for an excusable delay, the Government is justified in terminating the contract for default.

Appeal of Underground Utility Services, IBCA-1047-11-74, IBCA-1089-11-75 (Dec. 28, 1977)

Release and Settlement

Where cattle are admitted to an allotment at the beginning of the usual grazing season but prior to the issuance of a license for that season, and payment is later made by a check which recites that it is "payment in full for 1975 grazing fee," the Bureau of Land Management may properly deposit the check, allotting part of the proceeds for the grazing license for the rest of the season, and deposit the remainder of the proceeds

CONTRACTS--Continued

PERFORMANCE OR DEFAULT--Continued

Release and Settlement--Continued

in a suspense account pending resolution of the trespass. Such action indicates that the check was not accepted in settlement of the trespass damages, and cashing the check does not constitute an accord and satisfaction of the trespass damages.

Bureau of Land Management v. Poss Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

Substantial Performance

A default termination is found to be proper where no special circumstances were shown to exist justifying a contractor's refusal to proceed with performance in accordance with the contracting officer's decision pending the resolution of the dispute.

Appeals of Willie H. Petterson, IBCA-1115-7-76, IBCA-1116-7-76, IBCA-1117-7-76 and IBCA-1118-7-76 (Feb. 28, 1977)

Where one of the parties was to receive money and a rocked timber road according to specifications as consideration for a contract, and the road is not completed according to specification, nor is it suitable for the intended purpose, the doctrine of substantial performance will not apply as one of the parties is not compelled to accept a measure of performance fundamentally less than that bargained for.

Tomco, Inc., 29 IBLA 298 (Mar. 30, 1977)

Suspension of Work

A contractor's claim for additional costs attributed to the Government's delay in requesting contemplated installation services under a contract calling for the furnishing of governors for hydraulic turbines is dismissed for want of jurisdiction where the Board finds that the claim asserted is not redressable under the Changes clause of Standard Form 32 (Supply Contract) or under the special Suspension of Deliveries (or Services) clause which reserves to the Government the right to suspend services and preserves the contractor's right to make claim therefor but fails to provide that any costs attributable to such suspension shall be recoverable by way of an adjustment to the contract price.

Appeal of Cheston Co., IBCA-1093-1-76 (Nov. 19, 1976) 84 I.D. 924

Waiver and Estoppel

Upon reconsideration, the Board finds that where the Government issues an "Extra Work Order" under a "force account" provision for minor extra work not provided for in other pay items, at agreed on rates, the contractor is entitled to be paid for inefficiency, rework costs and delay costs when moisture causes borrow material placed under the extra work order, to become muddy. However, the appellant's failure to give prompt notice of the claim under the force account provision

CONTRACTS--Continued

PERFORMANCE OR DEFAULT--Continued

Waiver and Estoppel--Continued

caused the Government to order added pay item work, thus the claim must be reduced by the amount of added pay item payment.

Appeal of Rocky Mountain Construction Co., IBCA-1091-12-75 (Nov. 4, 1977) 84 I.D. 898

CONVEYANCES

GENERALLY

Extrinsic evidence may be used to make definite the description in a private deed which contains a latent ambiguity, either to determine actual or color of title. Therefore, a color of title claimant may introduce extrinsic evidence to establish whether the deeds in her chain of title were based upon plats, records and other documents which can be read together with the deeds as creating a color of title beyond the actual title shown on an official Federal survey plat.

Mable M. Farlow, 30 IBLA 320 (June 7, 1977) 84 I.D. 276

Where a corporation allegedly acquired a group of unpatented mining claims, but the instruments of conveyance and the abstract of title are subject to various objections by the Government's title examiner, which the corporation finds are difficult or impossible to cure, the corporation nonetheless may receive a patent to the claims pursuant to the Act of July 9, 1870 (R.S. § 2332; 30 U.S.C. § 38 (1970)), by demonstrating its qualifications under that Act.

Alaska Placer Co., 33 IBLA 187 (Dec. 21, 1977) 84 I.D. 990

COOPERATIVE AGREEMENTS

A communitization agreement involving an oil and gas lease for Cheyenne-Arapaho allotted lands may properly be approved by the Area Director, BIA, pursuant to 25 CFR 172.24 where that agreement incorporates all the terms and conditions of a State pooling order which joined the lessee with all other holders of mineral interests in the other tracts involved in the unit agreement.

Cotton Petroleum Corp. v. Samedan Oil Corp., 29 IBLA 13 (Feb. 8, 1977)

DESERT LAND ENTRY

GENERALLY

Rejection of an application for desert land entry on account of a failure to include therein post office addresses of witnesses making witness statements is

DESERT LAND ENTRY--Continued

GENERALLY--Continued

without prejudice to refiling of a corrected application where there is no competing interest for the same land.

William J. Hart, Lucile E. Hart, 30 IBLA 138 (May 12, 1977)

Excepting in the State of Nevada, no person shall be entitled to make entry of desert lands unless he be a resident citizen of the State in which the land sought to be entered is located. An applicant's conditional, future-oriented intention to reside in the State is insufficient to qualify.

Alton and VaLois Hadlock, 32 IBLA 372 (Oct. 31, 1977)

APPLICANTS

Excepting in the State of Nevada, no person shall be entitled to make entry of desert lands unless he be a resident citizen of the State in which the land sought to be entered is located. An applicant's conditional, future-oriented intention to reside in the State is insufficient to qualify.

Alton and VaLois Hadlock, 32 IBLA 372 (Oct. 31, 1977)

APPLICATIONS

Failure to answer completely a question on an application form for a desert land entry concerning citizenship of the applicant is not an adequate basis for rejecting the application when the requested information is readily apparent elsewhere on the application form.

Failure to include as required by 43 CFR 2521.2(b) the post office addresses of witnesses whose statements are part of an application for desert land entry is an adequate basis for rejecting the application.

Rejection of an application for desert land entry on account of a failure to include therein post office addresses of witnesses making witness statements is without prejudice to refiling of a corrected application where there is no competing interest for the same land.

William J. Hart, Lucile E. Hart, 30 IBLA 138 (May 12, 1977)

When lands have been classified under a final order of the Secretary of the Interior as being unsuitable for disposal under the desert land laws, a desert land entry petition-application will not be allowed.

Rulon Van Tassel, 33 IBLA 221 (Dec. 22, 1977)

DESERT LAND ENTRY--Continued

CANCELLATION

Rejection of an application for desert land entry on account of a failure to include therein post office addresses of witnesses making witness statements is without prejudice to refiling of a corrected application where there is no competing interest for the same land.

William J. Hart, Lucile E. Hart, 30 IBLA 138 (May 12, 1977)

CLASSIFICATION

When lands have been classified under a final order of the Secretary of the Interior as being unsuitable for disposal under the desert land laws, a desert land entry petition-application will not be allowed.

Rulon Van Tassel, 33 IBLA 221 (Dec. 22, 1977)

EXTENSION OF TIME

Application for second extension of time for submission of final proof on desert land entry is properly rejected where entryman is unable to show that failure to reclaim land in entry within statutory life of entry is because of unavoidable delay, without fault on part of entryman, in cultivation and construction of irrigation works.

Ivan J. Brower, 32 IBLA 286 (Sept. 27, 1977)

LANDS SUBJECT TO

When lands have been classified under a final order of the Secretary of the Interior as being unsuitable for disposal under the desert land laws, a desert land entry petition-application will not be allowed.

Rulon Van Tassel, 33 IBLA 221 (Dec. 22, 1977)

ENDANGERED SPECIES ACT OF 1973

SECTION 7

Critical Habitat

A Federal agency's responsibility to insure against critical habitat modification or destruction cannot be satisfied with the adoption of project modifications which ameliorate and reduce, but do not eliminate, the adverse impacts of the project upon critical habitat.

The Applicability of the Concept of Mitigation to Critical Habitat, M-36895 (July 14, 1977) 84 I.D. 403

ENDANGERED SPECIES ACT OF 1973--Continued

SECTION 7--Continued

Mitigation

A Federal agency's responsibility to insure against critical habitat modification or destruction cannot be satisfied with the adoption of project modifications which ameliorate and reduce, but do not eliminate, the adverse impacts of the project upon critical habitat.

The Applicability of the Concept of Mitigation to Critical Habitat, M-36895 (July 14, 1977) 84 I.D. 403

ENVIRONMENTAL POLICY ACT
(See also National Environmental Policy Act of 1969.)

Where an administrative decision is made that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review if it appears to have been made by an authorized officer, in good faith, based upon a proper and sufficient environmental analysis record compiled in accordance with established procedures, and is the reasonable result of his study of such record.

Citizens' Committee to Save Our Public Lands, 29 IBLA 48 (Feb. 16, 1977)

An application for a communication site under 43 U.S.C. $ 961 (1970) should be denied where utilization of an existing right-of-way is practical under 43 U.S.C. $ 1763 (19__) and where the proposed site would have an adverse impact on the environment.

"Practical." Under 43 U.S.C. $ 1763 (19__), utilization of a nearby existing communication site is practical where the site is suitable and the expense of utilization would not be unreasonable as compared with environmental damage from a proliferation of sites.

Jicarilla Apache Indian Tribe, 29 IBLA 57 (Feb. 16, 1977)

When parties are to offer evidence as to costs, to a mining claimant, of measures required by statute or regulation to mitigate environmental impact from development of a mine, it would be helpful for a Government contestant to assist an intervening State government and the claimant in computation of such costs; however, under 42 U.S.C. $ 4332 (1970), an environmental impact statement is not required prior to the nondiscretionary Federal action of issuance of a mineral patent.

United States v. Pittsburgh Pacific Co., 30 IBLA 388 (June 15, 1977) 84 I.D. 282

ENVIRONMENTAL QUALITY

GENERALLY

An application for a communication site under 43 U.S.C. $ 961 (1970) should be denied where utilization of an existing right-of-way is practical under 43 U.S.C. $ 1763 (19__) and where the proposed site would have an adverse impact on the environment.

"Practical." Under 43 U.S.C. $ 1763 (19__), utilization of a nearby existing communication site is practical where the site is suitable and the expense of utilization would not be unreasonable as compared with environmental damage from a proliferation of sites.

Jicarilla Apache Indian Tribe, 29 IBLA 57 (Feb. 16, 1977)

Although the Bureau of Land Management may require such special stipulations as are necessary for the protection of the lands embraced in any lease, proposed special stipulations must be supported by valid reasons which will be weighed by this Department with due regard for the public interest. It is the Bureau's responsibility to impose stipulations which are necessary, appropriate and reasonably related to oil and gas activities, and a stipulation which would forbid the lessee to occupy the surface must be set aside on appeal where BLM fails to provide adequate justification for its imposition and fails to show that it has considered less stringent stipulations.

Neva H. Henderson, 31 IBLA 217 (July 6, 1977)

Where, rather than delay action on an oil and gas lease offer pending a wilderness review and management decision pursuant to sec. 603 of the Federal Land Policy and Management Act, the Bureau of Land Management proposes to issue the lease immediately subject to a "no surface occupancy" stipulation under the apparently mistaken impression that the applicant had so requested, the decision will be set aside and action on the lease offer will be deferred until a final decision can be made.

Dell K. Hatch and Amoco Production Co., 33 IBLA 138 (Dec. 19, 1977)

ENVIRONMENTAL STATEMENTS

Where an administrative decision is made that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review if it appears to have been made by an authorized officer, in good faith, based upon a proper and sufficient environmental analysis record compiled in accordance with established procedures, and is the reasonable result of his study of such record.

Citizens' Committee to Save Our Public Lands, 29 IBLA 48 (Feb. 16, 1977)

EQUITABLE ADJUDICATION

GENERALLY

Where an applicant to purchase a trade and manufacturing site or a headquarters site states he was frustrated in completing his improvements and showing sufficient use of the land as required by the law because of more difficult or complex problems than anticipated, but has not shown that this operation could reasonably be expected to be successful, such problems will not afford any basis for equitable adjudication of his application to purchase.

United States v. Ronald B. Tippetts, 29 IBLA 348 (Mar. 31, 1977)

A factual error by the Government is not a basis for imposing the extraordinary relief of equitable estoppel where the person seeking the estoppel became aware of the true facts shortly thereafter, had not substantially complied with the public land laws, and continued knowingly and repeatedly trespassing on lands not open to settlement, where the Government makes prompt, reasonable, and consistent efforts to correct any misunderstanding caused by this error, and where the Government's actions did not result in the foreclosure of an opportunity to assert a legal right.

A homestead claimant who contracts for the planting of "enough acreage to satisfy the homestead law" in an essentially worthless hay crop in an area of Alaska where there are no livestock, and with no intention to harvest or utilize it even though it successfully matured, has performed only a token compliance which is, prima facie, demonstrative of bad faith. A good faith devotion of the land to productive and profitable agricultural use is essential to satisfy the purpose and intent of the agricultural land entry laws.

Henry E. Reeves, 31 IBLA 242 (July 18, 1977)

When a first-drawn oil and gas lease offer is disqualified because it is unsigned or undated, the Department's equitable adjudication authority may not be invoked to divest the first-qualified drawee of his preference right to a lease.

David L. Hansen, John B. Hurdle, John F. and Inez R. Cramer, 32 IBLA 272 (Sept. 27, 1977)

SUBSTANTIAL COMPLIANCE

Where a homestead entryman has cleared and broken ground and allowed a portion of the cleared, plowed acreage to grow up with a species of native wheat grass, such acreage is not "cultivated" within the meaning of 43 CFR 2567.5(b), and the entryman's final proof is properly rejected where it shows on its face that the native grass acreage constituted an indispensable portion of the entryman's attempt at meeting the cultivation requirements of the homestead laws. Since there was not substantial compliance with the cultivation requirements, equitable adjudication cannot be properly invoked.

Clarence Ray Mathis, 29 IBLA 150 (Mar. 4, 1977)

EQUITABLE ADJUDICATION--Continued

SUBSTANTIAL COMPLIANCE--Continued

A factual error by the Government is not a basis for imposing the extraordinary relief of equitable estoppel where the person seeking the estoppel became aware of the true facts shortly thereafter, had not substantially complied with the public land laws, and continued knowingly and repeatedly trespassing on lands not open to settlement, where the Government makes prompt, reasonable, and consistent efforts to correct any misunderstanding caused by this error, and where the Government's actions did not result in the foreclosure of an opportunity to assert a legal right.

Where during the 5-year term of a homestead there is a failure to comply with the residence and cultivation requirements and the requirement of a habitable house, and where subsequent efforts meet only the requirement for a habitable house, there can be no equitable adjudication based on substantial compliance with the homestead law.

Wherein one year the homestead land is leveled and seed is hand broadcast on the ground in late October after the first frost in Alaska, and the following year seed is simply scattered on the snow by a claimant who asserts he is "not a farmer at all" and does not know whether this is accepted practice, the cultivation requirements of the law have not been substantially met.

Henry E. Reeves, 31 IBLA 242 (July 18, 1977)

ESTOPPEL

A lessee of the water from a well owned by the Federal Government, who agrees that his use of the water will not be used as a basis for obtaining a permanent water right and who nevertheless proceeds to try to obtain a water right in State court based on that use, will be estopped from asserting any resulting decree of the State court for any purpose.

Park Center Water District and The Canon Heights Irrigation and Reservoir Co., 28 IBLA 368 (Feb. 3, 1977) 84 I.D. 87

Where an applicant for grazing privileges does not show the type of misconduct which would be a basis for estoppel against the Government, the provisions of 43 CFR 4115.2-1(e)(9)(i) and (e)(13)(i) cannot be waived on the basis of such misconduct.

A. D. Findlay (Appellant), Vermillion Cliff Cattle Co. (Intervenor), 29 IBLA 262 (Mar. 25, 1977)

Where tests performed by the BLM to determine whether rock placed on a timber road met specifications were not completed until the timber purchaser had finished his work on the road, there can be no basis for estoppel even if that doctrine were otherwise applicable.

Tomco, Inc., 29 IBLA 298 (Mar. 30, 1977)

ESTOPPEL--Continued

An estoppel of the Government to refuse acceptance of late rental payments is not created where in the past the BLM accepted rental payments after the anniversary date pursuant to 43 CFR 3103.3-2(e)(1) providing if the office to receive payment is closed on the anniversary date, payment will be considered timely if received on the next official working day.

A prerequisite of the reinstatement process is the tender of payment within 20 days of the anniversary date which protects the right of the lessee to petition for reinstatement. The check is then deposited in an unearned account to create a record of it, and bring it under accounting control, however, depositing of the check does not create an estoppel against the Government.

Adolph F. Muratori, 31 IBLA 39 (June 21, 1977)

The Government is not estopped from applying new provisions enacted in an amendment to the Mineral Leasing Act to an application for modification of an existing coal lease on account of laches, administrative delay, or misrepresentation by Government employees of the fact of Federal ownership of the land sought in the application.

Estate of Malcolm N. McKinnon, 31 IBLA 290 (July 22, 1977)

The fact that a mining claimant has held a claim for many years and performed work on the claim does not, by itself, create any rights against the Government which will estop the Government from determining the validity of the claim. It is incumbent upon the locator of a mining claim to exercise considerable care in ascertaining the status of the land embraced in the claim and the limitations of his rights as the holder of an unpatented mining claim. Failure of a Government employee to advise appellant that the land embraced in the mining claim was closed to mining location cannot give life to an invalid claim.

Arthur W. Boone, 32 IBLA 305 (Sept. 30, 1977)

Estoppel will not be applied against the Government when the sole basis for so doing is a statement by an applicant for a prospecting permit that a Geological Survey employee indicated that he could file the application in his own name, since this statement was not necessarily a misrepresentation, and since in any event the applicant had no right to rely on this statement because the Geological Survey is not the agency authorized to make representations as to the proper filing of prospecting applications.

Willadean Patton, Essex Minerals, Inc., National Bulk Carriers, Inc., 32 IBLA 350 (Oct. 21, 1977)

The failure of a noncompetitive oil and gas lease offeror to complete the date on the simultaneous oil and gas drawing entry card is not excused, and the Department is not estopped to reject such an offer, by

ESTOPPEL--Continued

his reliance on the Department's prior erroneous issuance of a lease in acceptance of an offer which was deficient for the same reason.

Tina A. Regan, 33 IBLA 213 (Dec. 21, 1977)

EVIDENCE

GENERALLY

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered; therefore, if evidence presented by contestee shows there has not been a discovery, it may be used in reaching a decision that the claim is invalid regardless of any defects in the prima facie case.

United States v. Lloyd O'Callaghan, Sr., et al., 29 IBLA 333 (Mar. 31, 1977)

Extrinsic evidence may be used to make definite the description in a private deed which contains a latent ambiguity, either to determine actual or color of title. Therefore, a color of title claimant may introduce extrinsic evidence to establish whether the deeds in her chain of title were based upon plats, records and other documents which can be read together with the deeds as creating a color of title beyond the actual title shown on an official Federal survey plat.

Mable M. Farlow, 30 IBLA 320 (June 7, 1977) 84 I.D. 276

The burden of the proponent is not simply to preponderate in the evidence produced; its burden is to produce a preponderance of credible evidence, and the trier of fact is not required to believe or give any weight to testimony which is inherently incredible.

United States v. Frank and Wanita Melluzzo (Supp. on Judicial Remand), 32 IBLA 46 (Sept. 2, 1977)

In a mining claim contest where a contestee is of the opinion that the Government did not make a prima facie case of no discovery, he may move to have the case dismissed at the conclusion of the Government's case, and then rest. The contest complaint could be dismissed if the Administrative Law Judge rules that no prima facie case had been made of lack of discovery and there is no other evidence in the record to support the charges in the complaint. But if the contestee goes forward after making such a motion to dismiss and presents his evidence, that evidence must be considered as part of the entire record and its probative value will be weighed. Thus, even if the Government has failed to make a prima facie case, evidence presented by the contestee which supports the Government's contest charges may be used against the contestee, regardless of the defects in the Government's case.

In a proceeding to determine the validity of an unpatented mining claim the claimants must prevail, if at

EVIDENCE--Continued

GENERALLY--Continued

all, upon the strength of their own case, rather than upon any weakness in that of the Government.

United States v. R. E. Rodgers and Barbara J. Rodgers, 32 IBLA 77 (Sept. 2, 1977)

When a mineral examiner testifies for the United States that a discovery has not been made on a mining claim, his opinion must be based on a proper factual foundation. However, he is not required to perform discovery work, to explore or sample beyond a claimant's workings, or to excavate or rehabilitate any purportedly mineralized area which is concealed by overburden or is otherwise difficult of access. Under proper circumstances, the testimony of the mineral examiner may establish a prima facie case of lack of discovery even though he was not physically on each mining claim.

United States v. Robert A. Rukke (Registered Agent), Valumines, Inc., et al., 32 IBLA 155 (Sept. 12, 1977)

When 33 percent of the available forage in a grazing allotment is on Federal land and the remainder is on private land, it is appropriate to find that 33 percent of the forage consumed by cattle throughout the allotment was Federal forage, in the absence of evidence to the contrary.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

Proposed testimony of a witness as to the procedures that would be followed by a person in private industry in making a complete evaluation of a mining claim is properly excluded as irrelevant because it does not have a logical relation to the type of an examination made by a Government mineral examiner to establish the facts on which the validity or invalidity of a mining claim may be determined.

Where a contestee fails to follow up his initial suggestion at the hearing that a deposition of a possible witness be taken with a proper request, it is not error for the Administrative Law Judge to decide the case on the record made at the hearing.

United States (Contestant) v. Earl Frisco and Sandra S. Young (Contestees), 32 IBLA 248 (Sept. 21, 1977)

ADMISSIBILITY

The rule of evidence excluding hearsay is not strictly adhered to in administrative proceedings, particularly where the evidence, such as assay reports with a proper foundation concerning the sampling, submission of the samples for assaying, and the reputation of the assayer, is competent and relevant. After such reports are admitted, the factfinder may give them appropriate weight according to the circumstances surrounding the specific report.

United States v. Robert A. Rukke (Registered Agent), Valumines, Inc., et al., 32 IBLA 155 (Sept. 12, 1977)

EVIDENCE--Continued

ADMISSIBILITY--Continued

Proposed testimony of a witness as to the procedures that would be followed by a person in private industry in making a complete evaluation of a mining claim is properly excluded as irrelevant because it does not have a logical relation to the type of an examination made by a Government mineral examiner to establish the facts on which the validity or invalidity of a mining claim may be determined.

Where a contestee fails to follow up his initial suggestion at the hearing that a deposition of a possible witness be taken with a proper request, it is not error for the Administrative Law Judge to decide the case on the record made at the hearing.

United States (Contestant) v. Earl Frisco and Sandra S. Young (Contestees), 32 IBLA 248 (Sept. 21, 1977)

BURDEN OF PROOF

A lode mining claim for barite is properly declared null and void in the absence of a showing of a discovery on the claim of a deposit of barite which would warrant a prudent man in further expending his labor and means in the reasonable expectation of developing a valuable mine. Evidence of mineralization which may justify further exploration is not sufficient to establish that a discovery of a valuable mineral deposit has been made.

Once the Government has established in a mining claim contest a prima facie case that the claims are not valid for lack of discovery, the burden shifts to the contestee to prove the discovery of a valuable mineral deposit by a preponderance of the evidence.

United States v. Howard S. McKenzie, 29 IBLA 270 (Mar. 28, 1977)

The ultimate burden of proof to show a discovery of a valuable mineral deposit is always upon the mining claimant, but if the Government in a contest fails to present a prima facie case and the contestee moves to dismiss the case and rests, the contest complaint must be dismissed because there would be no evidentiary basis for an order of invalidity.

Where the Government has made a prima facie case of lack of discovery in a mining contest, and a mining claimant fails to show discovery by a preponderance of the evidence, he has not satisfied his burden of proof and the claim must be declared invalid.

United States v. Lloyd O'Callaghan, Sr., et al., 29 IBLA 333 (Mar. 31, 1977)

In making a prima facie case of lack of discovery of a valuable mineral deposit, the Government has no duty to do the discovery work for the mining claimant. It is incumbent upon the claimant to keep his discovery points available for inspection. A prima facie case is established when a Government mineral examiner gives

EVIDENCE--Continued

BURDEN OF PROOF--Continued

his expert opinion that he examined the claim and found insufficient values to support a finding of discovery.

United States v. Emma Elizabeth Conner, and Walter T. Nolte, as the Heirs of R. W. Speer, a Last Known Director of the Arlington Gold Mining Co. (Contestee), 31 IBLA 173 (July 5, 1977)

After holding a hearing pursuant to the Administrative Procedure Act, an Administrative Law Judge may properly find that a person has committed a grazing trespass if that finding is in accordance with and supported by reliable, probative, and substantial evidence. Because a grazing trespass proceeding is not a criminal proceeding, it need not be proved beyond a reasonable doubt that a particular individual committed the trespass.

Bureau of Land Management v. Foss Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

The Goverment has the burden of proof that the contractor failed to deliver the goods. The contractor has the burden of proof that its failure was excusable. Where the only evidence of excusability was a letter from the contractor saying that it was delayed by delays in procurement of components and unexpectedly slower rates of system checkout and software debugging, the contractor has not carried its burden of proof of excusability and the appeal is denied.

Appeal of CSP, Inc., IBCA-1137-12-76 (Nov. 10, 1977) 84 I.D. 917

A Bureau of Land Management appraisal from which the annual rental for a special use permit is calculated will be upheld unless the permittee shows by substantial and positive evidence, specific errors in the method or facts on which the appraisal is based.

Michael S. Deering, 33 IBLA 142 (Dec. 19, 1977)

HEARSAY

The rule of evidence excluding hearsay is not strictly adhered to in administrative proceedings, particularly where the evidence, such as assay reports with a proper foundation concerning the sampling, submission of the samples for assaying, and the reputation of the assayer, is competent and relevant. After such reports are admitted, the factfinder may give them appropriate weight according to the circumstances surrounding the specific report.

United States v. Robert A. Rukke (Registered Agent), Valumines, Inc., et al., 32 IBLA 155 (Sept. 12, 1977)

EVIDENCE--Continued

PREPONDERANCE

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when such minerals were no longer subject to such location, the Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on each claim.

Where the expert witnesses called by the Government testify that prior to July 23, 1955, there was no profitable market for common variety minerals from the subject claims and that it would have been economic folly to undertake the development a mine thereon, a prima facie case of invalidity has been made. Thereafter, upon the failure of the claimant to prove the contrary by a preponderance of credible evidence, a determination that the claims are invalid is obligatory.

United States v. Frank and Wanita Melluzzo (Supp. on Judicial Remand), 32 IBLA 46 (Sept. 2, 1977)

PRESUMPTIONS

One challenging the accuracy of an appraisal of water based on fair-market value must show by substantial evidence the nature of the alleged error; where the appraisal has been conducted in accordance with generally accepted appraisal principles, allegations of error unsupported by evidence will be given little weight.

Park Center Water District and The Canon Heights Irrigation and Reservoir Co., 28 IBLA 368 (Feb. 3, 1977) 84 I.D. 87

Where a regulation requires that an oil and gas lease offer be accompanied by a separate statement, and appellant's offer is rejected for noncompliance therewith, appellant's showing that he has made it a past business practice to comply with the regulation in other instances must be regarded as evidence tending to support his assertion that he submitted the statement in this instance. However, such evidence, while cognizable, is insufficient to prove such an assertion without corroboration. A presumption of regularity supports the official acts of public officers and, absent clear evidence to contrary, it will be presumed that they have properly discharged their official duties.

David F. Owen, 31 IBLA 24 (June 20, 1977)

Where a regulation requires that an acquired lands oil and gas lease offer be accompanied by a separate statement as to the offeror's ownership of operating rights to the fractional mineral interest not owned by the United States, and the offer is rejected for noncompliance therewith, the offeror's bald assertion that he filed such statement is insufficient to prove such a fact without corroboration. A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

W. J. Langley, 32 IBLA 118 (Sept. 12, 1977)

EVIDENCE--Continued

PRESUMPTIONS--Continued

In the absence of any evidence to the contrary, the validity of the dates, on which a lease was signed and became effective, appearing on the face of a lease included in the record will be presumed.

Arjay Oil Co., 33 IBLA 102 (Dec. 16, 1977)

PRIMA FACIE CASE

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when such minerals were no longer subject to such location, the Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on each claim.

Where the expert witnesses called by the Government testify that prior to July 23, 1955, there was no profitable market for common variety minerals from the subject claims and that it would have been economic folly to undertake the development a mine thereon, a prima facie case of invalidity has been made. Thereafter, upon the failure of the claimant to prove the contrary by a preponderance of credible evidence, a determination that the claims are invalid is obligatory.

United States v. Frank and Wanita Melluzzo (Supp. on Judicial Remand), 32 IBLA 46 (Sept. 2, 1977)

SUFFICIENCY

In a contest of a patent application for a lode mining claim, the Board of Land Appeals may remand the case for further hearing to complete the record regarding the (1) availability and expense of necessary financing, land and water, (2) the expense of labor, and (3) the expense of compliance with environmental protection laws.

United States v. Pittsburgh Pacific Co., 30 IBLA 388 (June 15, 1977) 84 I.D. 282

Where a regulation requires that an oil and gas lease offer be accompanied by a separate statement, and appellant's offer is rejected for noncompliance therewith, appellant's showing that he has made it a past business practice to comply with the regulation in other instances must be regarded as evidence tending to support his assertion that he submitted the statement in this instance. However, such evidence, while cognizable, is insufficient to prove such an assertion without corroboration. A presumption of regularity supports the official acts of public officers and, absent clear evidence to contrary, it will be presumed that they have properly discharged their official duties.

David F. Owen, 31 IBLA 24 (June 20, 1977)

EVIDENCE--Continued

SUFFICIENCY--Continued

The burden of the proponent is not simply to preponderate in the evidence produced; its burden is to produce a preponderance of credible evidence, and the trier of fact is not required to believe or give any weight to testimony which is inherently incredible.

United States v. Frank and Wanita Melluzzo (Supp. on Judicial Remand), 32 IBLA 46 (Sept. 2, 1977)

After holding a hearing pursuant to the Administrative Procedure Act, an Administrative Law Judge may properly find that a person has committed a grazing trespass if that finding is in accordance with and supported by reliable, probative, and substantial evidence. Because a grazing trespass proceeding is not a criminal proceeding, it need not be proved beyond a reasonable doubt that a particular individual committed the trespass.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

Ordinarily the postmark date on a letter will be deemed the date of mailing. This inference may be rebutted on showing satisfactory, circumstantial evidence to lend credibility to an earlier date. A letter from postal authorities, acknowledging that a posted pickup schedule erroneously indicated pickups on Sundays and holidays, especially where the letter is accompanied by a photograph of the posted schedule, sufficiently corroborates lessee's contention that he mailed the rental payment prior to a Sunday and Monday holiday to rebut the inference resulting from a postmark of the following Tuesday.

Edward Malz, 33 IBLA 22 (Nov. 22, 1977)

Evidence that Forest Service land has been appraised at lower values and leased at lower rates than allegedly comparable Bureau of Land Management land will not suffice to overturn the latter's practices where no specific error in its methods has been shown.

Where a permittee introduces an alternative comparative sales analysis in opposition to that of the Bureau of Land Management, he must show by substantial and positive evidence why his analysis is valid and the Bureau of Land Management's invalid. Where the issue rests on the assertion of each party's expert on the validity of his respective analysis and the record fails to contain evidence by which this deadlock can be resolved, the case will be remanded for further factfinding.

Michael S. Deering, 33 IBLA 142 (Dec. 19, 1977)

An assertion by an alleged trespasser that he holds the right to graze and enclose Federal range must be documented to rebut the Government's prima facie case of trespass.

Joe Stewart, 33 IBLA 225 (Dec. 28, 1977)

EVIDENCE--Continued

WEIGHT

Past evidence of successful mining activity has limited probative value in determining whether there is a present discovery of a valuable mineral deposit or a mining claim, and assay reports can be given little weight when they are not supported by evidence as to who took the sample assayed, where it was taken, and what procedures were followed in taking the sample.

United States v. Lee Nicholson, et al., 31 IBLA 224 (July 7, 1977)

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969

ADMINISTRATIVE PROCEDURE

Appeals

In a civil penalty proceeding, where an Administrative Law Judge applies an amended version of a mandatory standard alleged to have been violated in lieu of the version in effect at the time the citation was issued, he errs, and where he has made all of the basic findings necessary to apply the correct version of the pertinent mandatory standard to the facts, the Board may so apply the correct standard in the interests of saving time and expense, rather than remanding. 30 U.S.C. § 819 (1970); 43 CFR 4.603, 4.605, 4.505(b).

Lone Star Steel Co., 7 IBMA 257 (Mar. 15, 1977) 84 I.D. 103

Hearings

Amendments to Pleadings

The Interior Board of Mine Operations Appeals will not overturn a procedural ruling by an Administrative Law Judge disallowing an amendment to a pleading unless the record manifests an abuse of discretion by showing such ruling to have a clear prejudicial effect upon the objecting party.

Gay Coal, Inc., 7 IBMA 245 (Mar. 10, 1977) 84 I.D. 99

APPEALS

Generally

The filing of a timely notice of appeal stays the effect of an initial decision by an Administrative Law Judge by operation of law, preventing it from becoming final, but such a stay is not a restraint on further enforcement action by MESA based upon the notice of violation or order of withdrawal under review. 43 CFR 4.594.

Old Ben Coal Co., 7 IBMA 272 (Mar. 30, 1977) 84 I.D. 124

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

APPEALS--Continued

Penalties

Where the record shows that the Administrative Law Judge has taken into consideration all relevant mitigating factors supported by the evidence, and has fixed the amount of the penalty accordingly, in the absence of a showing of an abuse of discretion on his part, the Board on appeal will not further modify the penalty assessed.

Peabody Coal Co., 7 IBMA 318 (May 20, 1977) 84 I.D. 202

APPLICATIONS FOR REVIEW

Investigations

In the circumstances of a given case, an Administrative Law Judge may properly rule that a hearing, by itself, is sufficient to satisfy the requirement of sec. 105 of the Act that the Secretary shall cause an investigation to be made as he deems appropriate.

American Coal Co., 8 IBMA 64 (July 14, 1977) 84 I.D. 394

DISCRIMINATION

Filing Period

The 30-day period in sec. 110(b)(2) of the Act for the filing of an application for review of alleged discriminatory conduct is a statute of limitations and is therefore an affirmative defense which is waived if not timely raised. 30 U.S.C. § 820(b)(2) (1970).

Phil Baker v. The North American Coal Co., 8 IBMA 164 (Sept. 30, 1977) 84 I.D. 877

Intention

Any miner seeking relief from alleged discriminatory conduct in retaliation for a safety complaint who has not directly reported to the Secretary or his authorized representative must show that it was his intention to contact the Federal authorities before the protection of the Act is invoked.

Phil Baker v. The North American Coal Co., 8 IBMA 164 (Sept. 30, 1977) 84 I.D. 877

Scope of Review

A finding that an operator violated mandatory safety standards is irrelevant in a proceeding brought by a miner pursuant to sec. 110(b)(1) of the Act. 30 U.S.C. § 820(b)(1) (1970).

Phil Baker v. The North American Coal Co., 8 IBMA 164 (Sept. 30, 1977) 84 I.D. 877

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

ENTITLEMENT OF MINERS

Compensation

Generally

A claim for compensation under sec. 110(a) for miners idled by a withdrawal order issued under sec. 104(a) of the Act is sustainable only as to those miners specifically withdrawn from the mine or an area of the mine by the terms of the withdrawal order as issued.

A claim for compensation under sec. 110(a) at the rate allowable for withdrawal orders issued for an unwarrantable failure to comply with a mandatory standard is not sustainable where such claim is predicated upon an immiment danger withdrawal order issued under sec. 104(a) of the Act.

United Mine Workers of America (Local Union No. 1993) v. Consolidation Coal Co., 8 IBMA 1 (June 3, 1977) 84 I.D. 254

Good Faith

Any miner seeking relief from an allegedly discriminatory discharge or refusal to rehire in retaliation for a safety complaint to the Secretary or his authorized representative and a refusal to work must show as part of his prima facie case that his complaint was based upon a good faith belief that there was a dangerous condition or practice.

Glenn Munsey v. Smitty Baker Coal Co., Inc., Ralph Baker, Smitty Baker, and P & P Coal Co., 8 IBMA 43 (June 30, 1977) 84 I.D. 336

EVIDENCE

Credibility of Witnesses

In the absence of a clear and convincing showing of prejudicial error, a Judge's findings as to witnesses' credibility will not be disturbed on appeal.

Old Ben Coal Co., 8 IBMA 19 (June 28, 1977) 84 I.D. 332

Prima Facie Case

The mere showing by MESA that a methane monitor was not set to indicate a true reading does not in itself prove a prima facie violation under 30 CFR 75.313 in that the terms "operative" and "properly maintained" refer to the functional properties of the monitor and not its calibration which is encompassed within the term "freguently tested."

Mid-Continent Coal and Coke Co., 8 IBMA 204 (Nov. 10, 1977) 84 I.D. 919

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

HEARINGS

Admissibility of Evidence

When an inspector-trainee observes conditions and practices in a mine relevant to a notice or order issued under the Act by an inspector, the former's testimony in regard thereto is not inadmissible on the ground that he is not an authorized representative of the Secretary.

American Coal Co., 8 IBMA 64 (July 14, 1977) 84 I.D. 394

IMMINENT DANGER

Extent of Withdrawal

In the review of a withdrawal order issued under sec. 104(a), the inconsistency between an inspector's finding of imminent danger and his failure to withdraw men from one of the areas logically affected thereby, should not be relied on directly to find that no imminent danger existed but it is not improper to rely on that inconsistency indirectly in determining the inspector's credibility at the hearing.

Old Ben Coal Co., 8 IBMA 19 (June 28, 1977) 84 I.D. 332

MANDATORY SAFETY STANDARDS

Accumulations of Combustible Materials

Generally

The phrase "shall be cleaned up and not permitted to accumulate" encompasses but one act of violation of the safety standard set forth in sec. 304(a) of the Act and in 30 CFR 75.400.

Old Ben Coal Co., 8 IBMA 98 (Aug. 17, 1977) 84 I.D. 459

Congressional Purpose

The Congressional purpose of the safety standard contained in sec. 304(a) of the Act was to minimize, rather than eliminate, the inevitable accumulations of combustible materials in active workings of coal mines so that they would be unlikely to contribute to coal mine fires or propagate coal mine explosions.

Old Ben Coal Co., 8 IBMA 98 (Aug. 17, 1977) 84 I.D. 459

Coal Mine Operator Responsibility

At least three specific obligations are imposed upon coal mine operators by the provisions of sec. 304(a) of the Act and 30 CFR 75.400: (1) to inaugurate and maintain regular programs to clean up combustible materials that inevitably accumulate as a result of ordinary and routine mining operations; (2) to clean up as promptly after discovery as reasonable, extraordinary accumulations of combustibles resulting from such incidents as roof falls, belt breakage, and haulage accidents; and

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

MANDATORY SAFETY STANDARDS--Continued

Accumulations of Combustible Materials--Continued

Coal Mine Operator Responsibility--Continued

(3) to diligently pursue prompt discovery of such accumulations in active workings.

Old Ben Coal Co., 8 IBMA 98 (Aug. 17, 1977) 84 I.D. 459

Elements of Proof

The elements of proof required to establish a violation of the safety standard under sec. 304(a) of the Act, or 30 CFR 75.400, are: (1) that an accumulation of coal dust, float coal dust deposited on rock dusted surfaces, loose coal, or other combustible materials existed in the active workings of a coal mine; (2) that the coal mine operator was aware, or, by the exercise of due diligence, should have been aware of the existence of such accumulation; and (3) that the operator failed to clean up such accumulation, or undertake cleanup, within a reasonable time after discovery, or after discovery should have been made.

Old Ben Coal Co., 8 IBMA 98 (Aug. 17, 1977) 84 I.D. 459

Reasonable Time

What constitutes a "reasonable time" within which an operator may clean up an accumulation after discovery, in order to avoid violation of sec. 304(a) of the Act, or 30 CFR 75.400, depends upon a case-by-case evaluation of the likelihood of the spillage to contribute to a mine fire or to propagate an explosion. Factors to be considered include the mass, extent, combustibility, and volatility of the accumulation, as well as its proximity to an ignition source.

Old Ben Coal Co., 8 IBMA 98 (Aug. 17, 1977) 84 I.D. 459

Violations

The mere presence of a deposit or accumulation of coal dust, float coal dust, loose coal or other combustible materials in active workings in a coal mine is not, by itself, a violation of sec. 304(a) of the Act or 30 CFR 75.400.

Where a large accumulation of combustible material was present in the active workings of a coal mine, consisting mostly of spillage caused by a defective beltline, and the coal mine operator, within a reasonable time after discovery, dispatched a sufficient number of mine personnel to promptly clean up the accumulation, the operator did not permit the accumulation, and thus, did not violate the safety standard of sec. 304(a) of the Act or 30 CFR 75.400.

Old Ben Coal Co., 8 IBMA 98 (Aug. 17, 1977) 84 I.D. 459

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

MANDATORY SAFETY STANDARDS--Continued

Methane Accumulations

Neither the Act nor the regulations provides that the mere presence of methane gas in excess of 1.0 volume per centum is per se a violation.

Mid-Continent Coal and Coke Co., 8 IBMA 204 (Nov. 10, 1977) 84 I.D. 919

Protective Equipment

Under 30 CFR 77.403, 36 FR 9364 (May 22, 1971), an operator was obliged to provide front-end loaders with roll protection, conditioned, however, on there being a necessity therefor, and when there was only an extremely slight chance of roll over, there was no such necessity and accordingly no obligation to do so.

Lone Star Steel Co., 7 IBMA 257 (Mar. 15, 1977) 84 I.D. 103

Roof Control

A violation of 30 CFR 75.200 is established where it is shown that an operator failed to comply with the provisions of its approved roof control plan in that the roof bolting pattern prescribed therein was destroyed by loosening two roof bolts for use as cable anchors.

Peabody Coal Co., 8 IBMA 121 (Aug. 24, 1977) 84 I.D. 469

Ventilation Plan

Evidence of failure by an operator to comply with the provisions of its approved ventilation plan constitutes a violation of 30 CFR 75.316.

Peabody Coal Co., 8 IBMA 121 (Aug. 24, 1977) 84 I.D. 469

MODIFICATION OF APPLICATION OF MANDATORY SAFETY STANDARDS

Generally

Where, in a proceeding to modify the application of the mandatory safety standard requiring that self-propelled electric face equipment be equipped with canopies or cabs (30 CFR 75.1710-1), a coal mine operator proves that the state of relevant mining operational conditions varies from time to time and does not remain static, it is error for the Administrative Law Judge to grant relief on the basis of the state of such conditions at a particular point in time or at a particular operating location in the mine in disregard of the variability of those conditions.

It is error to grant relief in mining sections with mining heights above 56 inches where the Petition for Modification prayed for relief only in sections where the mining height is 56 inches or less.

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

MODIFICATION OF APPLICATION OF MANDATORY SAFETY STANDARDS --Continued

Generally--Continued

It is error for the Judge to deny all relief that is requested where the evidence of record will permit the granting of some relief.

Southern Ohio Coal Co., 7 IBMA 331 (May 23, 1977)
84 I.D. 208

Burden of Proof

Where an operator has established a prima facie case of diminution of safety, the issue of the availability of technology which would allow compliance with a mandatory safety standard without a diminution of safety is an affirmative defense available to the Mining Enforcement and Safety Administration, and it is not necessary for the operator to prove that no such technology exists in order to prevail.

Southern Ohio Coal Co., 7 IBMA 331 (May 23, 1977)
84 I.D. 208

NOTICES OF VIOLATION

Reportable Accidents

The unintentional covering by intentional roof fall of a continuous mining machine during pillar mining constitutes a reportable accident pursuant to sec. 103(e) of the Act, as implemented by 30 CFR 80.1(b)(10).

United States Steel Corp., 8 IBMA 156 (Sept. 30, 1977)
84 I.D. 825

Sufficiency

It is improper to cite a general regulation governing ventilation plans where the alleged violation is based solely on an excessive accumulation of methane gas.

Mid-Continent Coal and Coke Co., 8 IBMA 204 (Nov. 10, 1977)
84 I.D. 919

PENALTIES

Amounts

In a sec. 109 de novo proceeding, an Administrative Law Judge may determine an amount of civil penalty for violations charged and found to have occurred higher than that proposed by the MESA Assessment Office for such violations where such determination is based upon consideration of the statutory criteria and findings which justify his assessments.

Gay Coal, Inc., 7 IBMA 245 (Mar. 10, 1977) 84 I.D. 99

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

PENALTIES--Continued

Elements of Proof

Although the fact of violation of a mandatory health or safety standard by a corporate coal mine operator is a necessary element of proof, such proof is not legally required to be established in a separate or consolidated proceeding against such operator as a condition precedent to instituting a proceeding against an agent of such operator under sec. 109(c) of the Act. 30 U.S.C. § 819(c) (1970).

Everett L. Pritt, 8 IBMA 216 (Nov. 30, 1977)
84 I.D. 960

Existence of Violation

Generally

A violation of 30 CFR 75.805 is established where it is shown that Miller plugs, connectors of the singlephase variety, are being employed on high-voltage electrical equipment.

Peabody Coal Co., 7 IBMA 318 (May 20, 1977)
84 I.D. 202

Negligence

An operator can be liable for a civil penalty under sec. 109 of the Act even though there is no showing of negligence on his part. Negligence is considered solely in determining the amount of the penalty.

Webster County Coal Corp., 7 IBMA 264 (Mar. 16, 1977)
84 I.D. 111

Procedure of Assessment

A technical defect in the assessment process does not affect the jurisdiction of an Administrative Law Judge and, in the absence of prejudice to a party, may be cured by an amendment to the petition.

Peabody Coal Co., 7 IBMA 318 (May 20, 1977)
84 I.D. 202

REGULATIONS

Generally

An operator's failure to notify MESA immediately of a gas ignition, in accordance with 30 CFR 80.11, constitutes a violation of sec. 103(e) of the Act (30 U.S.C. § 813(e) (1970)).

United States Steel Corp., 8 IBMA 230 (Dec. 21, 1977)
84 I.D. 1003

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

REVIEW OF NOTICES AND ORDERS

Generally

In a proceeding for review of a sec. 104(c)(2) order of withdrawal, the validity, substantive or procedural, of a precedent sec. 104(c)(2) order of withdrawal is not in issue and may not be decided by the Office of Hearings and Appeals.

The erroneous and inarticulate comprehension of the standard for unwarrantable failure by the issuing inspector does not prejudice the operator where the facts as found support a conclusion of unwarrantable failure using the proper standard.

Pocahontas Fuel Co., 8 IBMA 136 (Sept. 28, 1977)
84 I.D. 488

TEMPORARY RELIEF

Generally

Temporary relief from the effect of a notice of violation issued under sec. 104(b) in the form of an order by the Board restraining MESA from issuing an order of withdrawal thereunder during the pendency of a review proceeding pursuant to sec. 105 of the Act is expressly barred as a matter of law. 30 U.S.C. § 815(d) (1970), 43 CFR 4.572.

Old Ben Coal Co., 7 IBMA 272 (Mar. 30, 1977)
84 I.D. 124

UNWARRANTABLE FAILURE

Generally

The phrase unwarrantable failure to comply means the failure of an operator to abate a condition or practice constituting a violation of a mandatory standard it knew or should have known existed, or the failure to abate such a condition or practice because of a lack of due diligence, or because of indifference or lack of reasonable care. 30 U.S.C. § 814(c) (1970).

Zeigler Coal Co., 7 IBMA 280 (Mar. 31, 1977)
84 I.D. 127

WITHDRAWAL ORDERS

Specificity

Where a sec. 104(a) withdrawal order fails to give any description of the conditions or practices assertedly creating the alleged imminent danger, the various portions of the Act relating to the sec. 104(e) requirement that orders issued contain a detailed description of such conditions or practices demand that such an order be vacated.

Armco Steel Corp., 8 IBMA 88 (Aug. 17, 1977)
84 I.D. 454

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

WITHDRAWAL ORDERS--Continued

Unwarrantable Failure

The misfeasance of a preshift examiner in failing to detect the existence of a violation of the Act may be imputed to the operator so as to support a conclusion of unwarrantable failure on the operator's part.

Pocahontas Fuel Co., 8 IBMA 136 (Sept. 28, 1977)
84 I.D. 488

FEDERAL EMPLOYEES AND OFFICERS

GENERALLY

It is not the responsibility of Bureau of Land Management employees to decipher ambiguous bids for outer continental shelf oil and gas leases in order to save the bidder from the consequences of his own negligence. A bid which was apparently intended for one tract and contains data appropriate for that tract, but identifies a different tract as the subject of the bid, is properly considered, and rejected as too low, for the identified tract.

Alaska Oil and Minerals Corp., 29 IBLA 224 (Mar. 23, 1977)
84 I.D. 114

A delay in the adjudication of an application by officers or employees of the Department cannot create rights in Federal property contrary to law.

Guy W. Franson, 30 IBLA 123 (May 12, 1977)

A Government mineral examiner, versed in mining engineering and/or geology is qualified to evaluate a mining claim for a particular mineral even though he does not possess specific experience as to that mineral.

United States v. Doris Conger Caldwell, 33 IBLA 153 (Dec. 19, 1977)

AUTHORITY TO BIND GOVERNMENT

Where an applicant for grazing privileges does not show the type of misconduct which would be a basis for estoppel against the Government, the provisions of 43 CFR 4115.2-1(e)(9)(i) and (e)(13)(i) cannot be waived on the basis of such misconduct.

A. D. Findlay (Appellant), Vermillion Cliff Cattle Co. (Intervenor), 29 IBLA 262 (Mar. 25, 1977)

Reliance upon erroneous advice by Bureau of Land Management employees cannot estop the United States or confer upon an applicant any rights not authorized by law. 43 CFR 1810.3(c). Where it is not established that

FEDERAL EMPLOYEES AND OFFICERS--Continued

AUTHORITY TO BIND GOVERNMENT--Continued

the asserted advice was erroneous, estoppel does not operate.

United States v. Ronald B. Tippetts, 29 IBLA 348 (Mar. 31, 1977)

Even if the Bureau of Land Management incorrectly noted a withdrawal order on a status plat and appellant purportedly relied on this status plat when locating his mining claim, the mining claim, located on withdrawn land, is null and void because reliance upon records maintained by land offices cannot operate to vest any right not authorized by law.

Rod Knight, 30 IBLA 224 (May 26, 1977)

As a general rule, an applicant is not entitled to rely upon misinformation or erroneous advice given by departmental employees to acquire any rights in public lands not authorized by law. A corporation filing an oil and gas lease offer, signed by an officer not designated in accordance with 43 CFR 3102.4-1 as authorized to act on its behalf, cannot rely on the fact that the officer's signature was accepted by the Department on documents filed in unrelated matters to excuse its failure to provide the mandatory authorization.

Emerald Oil Co., 31 IBLA 119 (June 24, 1977)

The Government is not estopped from applying new provisions enacted in an amendment to the Mineral Leasing Act to an application for modification of an existing coal lease on account of laches, administrative delay, or misrepresentation by Government employees of the fact of Federal ownership of the land sought in the application.

Estate of Malcolm N. McKinnon, 31 IBLA 290 (July 22, 1977)

Reliance upon erroneous or incomplete information provided by BLM employees cannot create any rights not authorized by law.

W. R. C. Croley, 32 IBLA 5 (Aug. 24, 1977)

Verner F. Sorenson, 32 IBLA 341 (Oct. 21, 1977)

Reliance upon erroneous or incomplete information provided by BLM personnel cannot create any rights not authorized by law.

Joe I. and Celina V. Sanchez, et al., 32 IBLA 228 (Sept. 20, 1977)

FEDERAL EMPLOYEES AND OFFICERS--Continued

AUTHORITY TO BIND GOVERNMENT--Continued

Reliance upon erroneous and incomplete information provided by Federal employees cannot create any rights not authorized by law.

Mark W. Boone and John L. Dutra, 33 IBLA 32 (Nov. 25, 1977)

The authority of the Government to proceed with the withdrawal of public lands, after a Federal agency has filed an application for such action, which withdraws that land from mineral location, will not be barred by laches because of lapse of time.

William J. Smith, Sr., et al., 33 IBLA 47 (Nov. 25, 1977)

The failure of a noncompetitive oil and gas lease offeror to complete the date on the simultaneous oil and gas drawing entry card is not excused, and the Department is not estopped to reject such an offer, by his reliance on the Department's prior erroneous issuance of a lease in acceptance of an offer which was deficient for the same reason.

Tina A. Regan, 33 IBLA 213 (Dec. 21, 1977)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

GENERALLY

An appeal to the Board of Land Appeals will be dismissed where the enactment of the Federal Land Policy and Management Act renders moot the questions on appeal.

Silver Peak Townsite (Trustee), 30 IBLA 357 (June 10, 1977)

An application filed in 1976 to make a stock-raising homestead entry is properly rejected because the homesteading provisions of the Stock-raising Homestead Act were impliedly repealed by the Taylor Grazing Act and were expressly repealed by the Federal Land Policy and Management Act.

A petition-application for a homestead entry outside of Alaska requires classification of the land, confers no rights upon an applicant and must be rejected because the Federal Land Policy and Management Act repealed the homestead laws effective on the date of the Act as to lands outside Alaska.

Daniel A. Anderson, 31 IBLA 162 (July 1, 1977)

Under the Federal Land Policy and Management Act of 1976 and interim guidelines issued pursuant thereto, special use permit applications for access roads over public land are properly processed as right-of-way applications. 43 U.S.C. § 1761. The Bureau of Land Management correctly denies such an application where it has determined, in conformance with the Act and interim

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

guidelines, that an access road would neither be in the public interest nor facilitate land management policy.

Edwin L. Rumpf, Jr., 31 IBLA 367 (Aug. 1, 1977)

Until such time as the Department promulgates regulations, policy guidelines or criteria implementing sec. 302 of the Federal Land Policy and Management Act of 1976, the Bureau of Land Management may properly defer action on the proposed creation of an estate in Federal land thereunder.

Treva L. Berger, 31 IBLA 389 (Aug. 19, 1977)

A right-of-way for a communication site for which application was made under the Act of Mar. 4, 1911, shall conform to the provisions of the Federal Land Policy and Management Act of 1976, sec. 510, 90 Stat. 2743, 2782, when application for grant was pending on Oct. 21, 1976.

Four States Television, Inc., 32 IBLA 205 (Sept. 19, 1977)

Under sec. 402(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1752(c) (West Supp. 1977), the holder of an expiring grazing lease receives first priority for the new lease if the requirements of sec. 402(c) are met. Therefore, a conflicting applicant is properly denied the lease where the renewal applicant meets those requirements.

Allen R. Prouse, 32 IBLA 311 (Sept. 30, 1977)
84 I.D. 874

Under sec. 402(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1752(c) (West Supp. 1977), the holder of an expiring lease shall be given first priority for receipt of the new lease as long as the lessee is in compliance with the rules and regulations issued and the terms and conditions in the lease. Therefore, if the holder of an expiring lease loses control of the private property contiguous to public land which gave him a preference right to a lease under 43 CFR 4121.2-1(c), he is not entitled to first priority for receipt of a new lease.

Mark X. Trask, 32 IBLA 395 (Nov. 9, 1977)

Sec. 310 of the Federal Land Policy and Management Act of 1976 provides that, prior to promulgation of new regulations, the Secretary will administer the public lands under existing regulations to the extent practical. Issuance of a right-of-way permit for an electrical power transmission line prior to the promulgation of new regulations under sec. 504 of the Act is permissible under the authority in sec. 310.

The fact that various of the existing regulations in 43 CFR Part 2800, governing issuance of rights-of-way,

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

are not wholly consistent with the Federal Land Policy Management Act of 1976 does not render invalid a BLM decision granting a right-of-way under the authority of sec. 310 of that Act.

Sec. 505, Federal Land Policy and Management Act of 1976, does not require that preliminary planning considerations be enumerated on the face of a grant of a right-of-way.

The third party participation provision of sec. 102(a)(5), Federal Land Policy and Management Act of 1976, is entirely satisfied by a series of public hearings held prior to the grant of a power transmission right-of-way.

David Smith Ranches, et al. (Appellants), Colorado Ute Electric Assoc., Inc. (Intervenor), 33 IBLA 7 (Nov. 15, 1977)

Under sec. 310 of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1764(g) (West Supp. 1977), charges for rights-of-way on public lands are in general to be paid annually rather than in advance for a longer period pursuant to 43 CFR 2802.1-7(a).

XYZ Television, Inc., 33 IBLA 80 (Dec. 8, 1977)

RECORDATION OF MINING CLAIMS AND ABANDONMENT

Land which has been patented without a reservation of minerals to the United States or which otherwise has been removed from the operation of the United States mining laws is not available for the location of mining claims. Mining claims located on such land after it is so removed are null and void ab initio. Attempts to record such claims under 43 U.S.C.A. § 1744 (West Supp. 1977) are properly rejected.

The Bureau of Land Management may require maps of mining claims meeting the requirements of 43 CFR 3833.1-2(c)(7) before accepting the recordation of the claims under 43 U.S.C.A. § 1744 (West Supp. 1977).

Paul S. Coupey, 33 IBLA 178 (Dec. 20, 1977)

RIGHTS-OF-WAY

An application for a communication site under 43 U.S.C. § 961 (1970) should be denied where utilization of an existing right-of-way is practical under 43 U.S.C. § 1763 (19__) and where the proposed site would have an adverse impact on the environment.

"Practical." Under 43 U.S.C. § 1763 (19__), utilization of a nearby existing communication site is practical where the site is suitable and the expense of utilization would not be unreasonable as compared with environmental damage from a proliferation of sites.

Jicarilla Apache Indian Tribe, 29 IBLA 57 (Feb. 16, 1977)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RIGHTS-OF-WAY--Continued

Under 43 CFR 2802.1-7(e), the charge for a right-of-way on public lands may be revised upon compliance with procedural requirements at any time 5 years or more from the date when the rate was initially established.

XYZ Television, Inc., 32 IBLA 317 (Sept. 30, 1977)

Under sec. 310 of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1764(g) (West Supp. 1977), charges for rights-of-way on public lands are in general to be paid annually rather than in advance for a longer period pursuant to 43 CFR 2802.1-7(a).

XYZ Television, Inc., 33 IBLA 80 (Dec. 8, 1977)

RULES AND REGULATIONS

As between two preference-right applicants for land offered at public sale under the Isolated Tract Act, 43 U.S.C. § 1171 (1970), departmental regulation 43 CFR 2711.4(b)(2) continues in effect pursuant to 43 U.S.C.A. §§ 1713, 1740 (West Supp. 1977) and is strictly construed with regard to the deadline for making the required showing of fee title to contiguous land.

Although the Federal Land Policy and Management Act, 43 U.S.C.A. § 1701 et seq. (West Supp. 1977), repealed the Isolated Tract Act, 43 U.S.C. § 1171 (1970), where a public sale was held prior to Oct. 21, 1976, with the decision to hold the sale fully supported by land use plans, and there is an explicit finding that disposal criteria of the Federal Land Policy and Management Act have been met, final certificate and patent may be issued to the highest preference-right bidder pursuant to 43 CFR 2711.4 et seq.

L. A. Gillette, 33 IBLA 182 (Dec. 21, 1977)

SALES

As between two preference-right applicants for land offered at public sale under the Isolated Tract Act, 43 U.S.C. § 1171 (1970), departmental regulation 43 CFR 2711.4(b)(2) continues in effect pursuant to 43 U.S.C.A. §§ 1713, 1740 (West Supp. 1977) and is strictly construed with regard to the deadline for making the required showing of fee title to contiguous land.

Although the Federal Land Policy and Management Act, 43 U.S.C.A. § 1701 et seq. (West Supp. 1977), repealed the Isolated Tract Act, 43 U.S.C. § 1171 (1970), where a public sale was held prior to Oct. 21, 1976, with the decision to hold the sale fully supported by land use plans, and there is an explicit finding that disposal criteria of the Federal Land Policy and Management Act have been met, final certificate and patent may be issued to the highest preference-right bidder pursuant to 43 CFR 2711.4 et seq.

L. A. Gillette, 33 IBLA 182 (Dec. 21, 1977)

GEOLOGICAL SURVEY

Authority to make determinations of known geothermal resources area has been delegated to the Geological Survey by the Secretary of the Interior. Where such determination is based upon any or all of the evidentiary factors stated 30 U.S.C. § 1001(e) (1970) and appellant does not show that the determination is in error, the determination will stand.

Earth Power Corp., 29 IBLA 37 (Feb. 16, 1977)

Authority to make determinations of known geothermal resource areas has been delegated to the Geological Survey by the Secretary of the Interior. Where such determination is based upon the evidentiary factors set forth in 30 U.S.C. § 1001(e) (1970), and on appeal appellant fails to establish any error in a Geological Survey determination of a known geothermal resources area, the determination will stand.

The Geological Survey, as the delegate of the Secretary, has a continuous obligation to review the evidentiary factors set forth in 30 U.S.C. § 1001(e) (1970), to determine whether an area should be designated as a known geothermal resources area. Such an obligation necessarily envisions the review of factors which individually may or may not afford a sufficient basis for the designation, but which taken collectively clearly establish a sufficient predicate for determination of a known geothermal resources area.

Nancy J. Moffitt, et al., 30 IBLA 107 (May 2, 1977)

A determination of an Area Oil and Gas Supervisor, Geological Survey, that a subsequent joinder could not effectuate commitment of an oil and gas lease to a unit agreement prior to expiration of the lease is properly set aside by the Director, Geological Survey, as not being within the authority of the Area Oil and Gas Supervisor to determine.

Bruce Anderson, 30 IBLA 179 (May 19, 1977)

A known geothermal resources area determination must be based upon one or more of the evidentiary factors set forth in 30 U.S.C. § 1001(e) (1970), and where the Geological Survey, as the delegate of the Secretary, makes such a determination based on all available data, regardless of whether such data were previously known, the determination will stand, absent a showing of error by one questioning the designation.

Nancy J. Moffitt, et al. (On Reconsideration), 31 IBLA 191 (July 5, 1977)

Estoppel will not be applied against the Government when the sole basis for so doing is a statement by an applicant for a prospecting permit that a Geological Survey employee indicated that he could file the application in his own name, since this statement was not necessarily a misrepresentation, and since in any event the applicant had no right to rely on this statement

GEOLOGICAL SURVEY--Continued

because the Geological Survey is not the agency authorized to make representations as to the proper filing of prospecting applications.

Willadean Patton, Essex Minerals, Inc., National Bulk Carriers, Inc., 32 IBLA 350 (Oct. 21, 1977)

A mining plan submitted to the U.S. Geological Survey is properly classified a "new operation" as defined by 30 CFR 211.1(d)(1)(iii) where as of the date of its submission to the Department, the Department has not completed its environmental impact analysis involving the area in which the mining plan is located, nor has it, as of that date, commenced and expended substantial resources in the preparation or completion of that analysis.

Routt County Development, Ltd., 33 IBLA 130 (Dec. 19, 1977)

GEOTHERMAL LEASES

GENERALLY

A decision rejecting a geothermal application in part may be set aside and the case remanded where the appellant requests an opportunity to consult with the Bureau of Reclamation which objected to issuance of the lease, and the decision itself notes that Bureau's objection as the basis for the decision, but there is no explanation of why the leasing proposal would interfere with some other Federal function or would be contrary to the public interest pursuant to 43 CFR 3201.1-2.

Thermal Resources, Inc., 28 IBLA 361 (Feb. 2, 1977)

This Department may lease national forest lands for geothermal resources only with the consent of the Department of Agriculture. The Bureau of Land Management is bound by the finding of that Department that geothermal leasing for such lands is inimical to the public interest.

William A. Hendrey, 33 IBLA 71 (Dec. 5, 1977)

APPLICATIONS

Generally

Where an application for a geothermal resource lease is filed for all the land available within a surveyed or protracted section, as required by regulation, but the application is then reduced to less than all such land by voluntary withdrawal, the offer is properly rejected.

Chevron Oil Co., 28 IBLA 386 (Feb. 4, 1977)

GEOTHERMAL LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

A geothermal lease application is properly rejected to the extent that it includes land which has been reconveyed to the United States but which has only been opened to applications under the nonmineral public land laws.

Chevron Oil Co., 32 IBLA 275 (Sept. 27, 1977)

This Department may lease national forest lands for geothermal resources only with the consent of the Department of Agriculture. The Bureau of Land Management is bound by the finding of that Department that geothermal leasing for such lands is inimical to the public interest.

William A. Hendrey, 33 IBLA 71 (Dec. 5, 1977)

COMPETITIVE LEASES

30 U.S.C. § 1003 (1970) authorizes competitive bidding as the sole basis for issuance of geothermal resources leases for lands determined to be within a known geothermal resources area, whether the KGRA determination is made before or after a noncompetitive application is filed.

Earth Power Corp., 29 IBLA 37 (Feb. 16, 1977)

CONSENT OF AGENCY

The directives of 30 U.S.C. § 1014(b) (1970) and 43 CFR 3201.1-3 are mandatory, and unless the Forest Service gives its consent to the geothermal leasing of the national forest lands in dispute, the Department of the Interior may not issue leases on those lands.

Earth Power Corp., et al., 32 IBLA 357 (Oct. 21, 1977)

DISCRETION TO LEASE

Issuance of a lease for geothermal resources is within the discretion of the Secretary of the Interior. Thus, the filing of an offer for a noncompetitive lease for geothermal steam resources creates no vested rights in the offeror and the offer must be rejected if the lands are found to be within a known geothermal resources area at any time prior to the issuance of a lease.

Earth Power Corp., 29 IBLA 37 (Feb. 16, 1977)

This Department may lease national forest lands for geothermal resources only with the consent of the Department of Agriculture. The Bureau of Land Management is bound by the finding of that Department that geothermal leasing for such lands is inimical to the public interest.

William A. Hendrey, 33 IBLA 71 (Dec. 5, 1977)

GEOTHERMAL LEASES--Continued

KNOWN GEOTHERMAL RESOURCES AREA

It is unnecessary for the Secretary, or his delegate, to consult with men experienced in the exploitation of geothermal steam to make a determination of a known geothermal resources area. It is sufficient that he entertain the opinion that any or all of the elements delineated in 30 U.S.C. § 1001(e) (1970), would engender a belief in such men that the prospects for extraction of geothermal steam or associated geothermal resources are good enough to warrant expenditures of money for that purpose.

Authority to make determinations of known geothermal resources area has been delegated to the Geological Survey by the Secretary of the Interior. Where such determination is based upon any or all of the evidentiary factors stated 30 U.S.C. § 1001(e) (1970) and appellant does not show that the determination is in error, the determination will stand.

30 U.S.C. § 1003 (1970) authorizes competitive bidding as the sole basis for issuance of geothermal resources leases for lands determined to be within a known geothermal resources area, whether the KGRA determination is made before or after a noncompetitive application is filed.

Issuance of a lease for geothermal resources is within the discretion of the Secretary of the Interior. Thus, the filing of an offer for a noncompetitive lease for geothermal steam resources creates no vested rights in the offeror and the offer must be rejected if the lands are found to be within a known geothermal resources area at any time prior to the issuance of a lease.

Earth Power Corp., 29 IBLA 37 (Feb. 16, 1977)

Authority to make determinations of known geothermal resource areas has been delegated to the Geological Survey by the Secretaryof the Interior. Where such determination is based upon the evidentiary factors set forth in 30 U.S.C. § 1001(e) (1970), and on appeal appellant fails to establish any error in a Geological Survey determination of a known geothermal resources area, the determination will stand.

The Geological Survey, as the delegate of the Secretary, has a continuous obligation to review the evidentiary factors set forth in 30 U.S.C. § 1001(e) (1970), to determine whether an area should be designated as a known geothermal resources area. Such an obligation necessarily envisions the review of factors which individually may or may not afford a sufficient basis for the designation, but which taken collectively clearly establish a sufficient predicate for determination of a known geothermal resources area.

Nancy J. Moffitt, et al., 30 IBLA 107 (May 2, 1977)

A known geothermal resources area determination must be based upon one or more of the evidentiary factors set forth in 30 U.S.C. § 1001(e) (1970), and where the Geological Survey, as the delegate of the Secretary, makes such a determination based on all available data, regardless of whether such data were previously known,

GECTHERMAL LEASES--Continued

KNCWN GEOTHERMAL RESOURCES AREA--Continued

the determination will stand, absent a showing of error by one questioning the designation.

Nancy J. Moffitt, et al. (On Reconsideration), 31 IBLA 191 (July 5, 1977)

LANDS SUBJECT TO

A geothermal lease application is properly rejected to the extent that it includes land which has been reconveyed to the United States but which has only been opened to applications under the nonmineral public land laws.

Chevron Oil Co., 32 IBLA 275 (Sept. 27, 1977)

NONCOMPETITIVE LEASES

30 U.S.C. § 1003 (1970) authorizes competitive bidding as the sole basis for issuance of geothermal resources leases for lands determined to be within a known geothermal resources area, whether the KGRA determination is made before or after a noncompetitive application is filed.

Issuance of a lease for geothermal resources is within the discretion of the Secretary of the Interior. Thus, the filing of an offer for a noncompetitive lease for geothermal steam resources creates no vested rights in the offeror and the offer must be rejected if the lands are found to be within a known geothermal resources area at any time prior to the issuance of a lease.

Earth Power Corp., 29 IBLA 37 (Feb. 16, 1977)

REINSTATEMENT

A geothermal resource lease automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date, and a terminated lease may only be reinstated if it is shown that the failure to pay the lease rental timely was justifiable or not due to a lack of reasonable diligence.

The standards of reasonable diligence and justifiable delay govern reinstatement of oil and gas leases as well as geothermal leases, and principles established in oil and gas lease reinstatement cases generally govern cases involving reinstatement of geothermal leases as well.

The submission of an unsigned check the day before the anniversary date of a geothermal resource lease does not constitute timely payment of rental and such a lease terminates by operation of law. The fact that a signed check was not sent until after the anniversary date precludes a finding of reasonable diligence, and because the failure to sign the original check was the result of inadvertence or employee error, it is a matter within the control of the lessee and therefore does not constitute justification for late payment.

Page T. Jenkins, 33 IBLA 135 (Dec. 19, 1977)

GEOTHERMAL LEASES--Continued

TERMINATION

A geothermal resource lease automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date, and a terminated lease may only be reinstated if it is shown that the failure to pay the lease rental timely was justifiable or not due to a lack of reasonable diligence.

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Page T. Jenkins, 33 IBLA 135 (Dec. 19, 1977)

GEOTHERMAL RESOURCES

A reservation of geothermal resources under the Geothermal Steam Act of 1970 may be inserted in a patent issued for an Indian allotment granted under the fourth section of the General Allotment Act.

Heirs of Carrie Bethel, 29 IBLA 210 (Mar. 22, 1977)

Under 43 U.S.C. § 852(a)(1) (1970), as amended by sec. 25 of the Geothermal Steam Act of 1970, 30 U.S.C. § 1024 (1970), a State may select lands with geothermal potential as indemnity for base lands lost by it from its grant for common schools without a reservation to the United States of the geothermal rights therein, provided that these base lands also have geothermal potential.

Per sec. 25 of the Geothermal Steam Act of 1970, geothermal resources are treated under 43 U.S.C. § 852(a) (1970) as other leasable minerals, rather than as oil and gas, so that a State need not submit as base for indemnity selection of lands which have been classified by the Geological Survey as being within a "KGRA" (known geothermal resource area) lands which also are classified as KGRA, but instead need only submit base lands classified by GS as having geothermal potential.

Where BLM has issued a clear list giving a State title to lands selected as indemnity for lost school lands but erroneously reserving to the United States geothermal rights to these selected lands, these geothermal rights are still within the power of the United States to dispose of, and the Department still exercises jurisdiction over them, so that the Board of Land Appeals may correct BLM's error by ordering that these

GEOTHERMAL RESOURCES--Continued

rights be given to the State by deleting the reservation thereof in the clear list.

Where the record indicates that there may be gross disparity between the value of lands selected by a State as indemnity for lost school lands and the value of base lands submitted by the State in support of the selection, the matter will be remanded to the BLM for revaluation of the lands. If the revaluation reveals a gross disparity, the BLM shall withhold further action until judicial resolution of the propriety of the "grossly disparate value" policy.

State of California, 33 IBLA 160 (Dec. 20, 1977)

GRAZING AND GRAZING LANDS

The denial of a private landowner's request that the Bureau of Land Management share in the expenses of constructing a fence between Federal and private land will be upheld where the landowner has failed to show a valid legal or factual reason for granting the request.

John L. Timm and Ruth D. Blomgren, 30 IBLA 317 (June 6, 1977)

GRAZING LEASES

GENERALLY

One who has laid claim, pursuant to the Wild Free-Roaming Horses and Burros Act, to horses on the public lands and who does not remove them within a reasonable period, is subject to having the renewal of his grazing lease denied.

Truman and Velma Cross, 29 IBLA 4 (Feb. 7, 1977)

A preference-right applicant is properly determined to have lost control of non-Federal leased lands which constitute the basis for the preference and thereafter his sec. 15 grazing lease is subject to cancellation where (1) the lessor of the preference land notifies the BLM that the applicant's private lease has been terminated for delinquent rental; (2) the provisions of the private lease on record with the BLM clearly indicate the lessor has ample authority to cancel that lease at his discretion; and (3) after confrontation with these circumstances by a BLM show cause notice, the applicant does not deny he has lost control of his base lands, nor does he provide positive or substantive evidence that he still controls the private leased base lands.

Charles A. Mitchell, Jr., 30 IBLA 1 (Apr. 1, 1977)

Under the terms and conditions in 43 CFR 4125.1-1(i) placed by the Department on the continued effectiveness of grazing leases, as allowed by sec. 15 of the Taylor Grazing Act, a grazing lease may be canceled in its entirety in order to use the land included in it as a wildlife habitat.

Under sec. 402(g) of the Federal Land Policy and Management Act, except in cases of emergency, a cancellation of a grazing lease by the Government after Oct. 21,

GRAZING LEASES--Continued

GENERALLY--Continued

1976, may not be given effect until 2 years after the lessee has received notification of the cancellation of the lease. This provision is construed as applicable to all existing grazing leases, licenses and permits, including those issued prior to the Act.

Bill W. Fraser, 30 IBLA 277 (June 1, 1977)

A grazing lease is properly canceled because of the lessee's loss of control of the lands which were recognized as the basis of the preference right to the lease.

H. Richard Wendling, 31 IBLA 214 (July 6, 1977)

Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. A decision made in the exercise of that discretion must contain such a statement of reasons in support of the decision as will establish that the discretion has been exercised in a manner that is neither arbitrary nor capricious. Review on the issue of abuse of discretion is limited to an inquiry whether the statement of reasons establishes a rational and defensible basis for the decision below.

Andrew H. L. Anderson, et al., 32 IBLA 123 (Sept. 12, 1977)

Under sec. 402(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1752(c) (West Supp. 1977), the holder of an expiring grazing lease receives first priority for the new lease if the requirements of sec. 402(c) are met. Therefore, a conflicting applicant is properly denied the lease where the renewal applicant meets those requirements.

Allen R. Prouse, 32 IBLA 311 (Sept. 30, 1977)
84 I.D. 874

Under sec. 402(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1752(c) (West Supp. 1977), the holder of an expiring lease shall be given first priority for receipt of the new lease as long as the lessee is in compliance with the rules and regulations issued and the terms and conditions in the lease. Therefore, if the holder of an expiring lease loses control of the private property contiguous to public land which gave him a preference right to a lease under 43 CFR 4121.2-1(c), he is not entitled to first priority for receipt of a new lease.

Where an area manager's decision divides the sec. 15 grazing use of a tract of public land between two applicants on the assumption that both are qualified preference-right claimants, and it is determined on appeal that one claimant is not qualified, the decision will be set aside and the case remanded to the Bureau of Land Management for determination of the rights of the other applicant.

Mark X. Trask, 32 IBLA 395 (Nov. 9, 1977)

GRAZING LEASES--Continued

APPLICATIONS

In order to qualify as a preference-right applicant for a grazing lease on public land under sec. 15 of the Taylor Grazing Act, the applicant must own or control contiguous or cornering private land, the proper use of which requires issuance of a grazing lease. The fact that an applicant once owned contiguous land and had a lease for the public land is irrelevant in determining his present preference status.

Mark X. Trask, 32 IBLA 395 (Nov. 9, 1977)

APPORTIONMENT OF LAND

Where an area manager's decision divides the sec. 15 grazing use of a tract of public land between two applicants on the assumption that both are qualified preference-right claimants, and it is determined on appeal that one claimant is not qualified, the decision will be set aside and the case remanded to the Bureau of Land Management for determination of the rights of the other applicant.

Mark X. Trask, 32 IBLA 395 (Nov. 9, 1977)

CANCELLATION OR REDUCTION

In accordance with 43 CFR 4125.1-1(i)4, and with the terms of a sec. 15 grazing lease, Taylor Grazing Act, as amended, 43 U.S.C. § 315m (1970), a preference-right lease will be terminated upon loss of control by the lessee of non-Federal lands which have been recognized as the basis for the issuance of that lease.

Charles A. Mitchell, Jr., 30 IBLA 1 (Apr. 1, 1977)

Under the terms and conditions in 43 CFR 4125.1-1(i) placed by the Department on the continued effectiveness of grazing leases, as allowed by sec. 15 of the Taylor Grazing Act, a grazing lease may be canceled in its entirety in order to use the land included in it as a wildlife habitat.

Under sec. 402(g) of the Federal Land Policy and Management Act, except in cases of emergency, a cancellation of a grazing lease by the Government after Oct. 21, 1976, may not be given effect until 2 years after the lessee has received notification of the cancellation of the lease. This provision is construed as applicable to all existing grazing leases, licenses and permits, including those issued prior to the Act.

Bill W. Fraser, 30 IBLA 277 (June 1, 1977)

A grazing lease is properly canceled because of the lessee's loss of control of the lands which were recognized as the basis of the preference right to the lease.

H. Richard Wendling, 31 IBLA 214 (July 6, 1977)

GRAZING LEASES--Continued

PREFERENCE RIGHT APPLICANTS

A preference-right applicant is properly determined to have lost control of non-Federal leased lands which constitute the basis for the preference and thereafter his sec. 15 grazing lease is subject to cancellation where (1) the lessor of the preference land notifies the BLM that the applicant's private lease has been terminated for delinquent rental; (2) the provisions of the private lease on record with the BLM clearly indicate the lessor has ample authority to cancel that lease at his discretion; and (3) after confrontation with these circumstances by a BLM show cause notice, the applicant does not deny he has lost control of his base lands, nor does he provide positive or substantive evidence that he still controls the private leased base lands.

Charles A. Mitchell, Jr., 30 IBLA 1 (Apr. 1, 1977)

In order to qualify as a preference-right applicant for a grazing lease on public land under sec. 15 of the Taylor Grazing Act, the applicant must own or control contiguous or cornering private land, the proper use of which requires issuance of a grazing lease. The fact that an applicant once owned contiguous land and had a lease for the public land is irrelevant in determining his present preference status.

Where an area manager's decision divides the sec. 15 grazing use of a tract of public land between two applicants on the assumption that both are qualified preference-right claimants, and it is determined on appeal that one claimant is not qualified, the decision will be set aside and the case remanded to the Bureau of Land Management for determination of the rights of the other applicant.

Mark X. Trask, 32 IBLA 395 (Nov. 9, 1977)

RENEWAL

Where by final judgment a court has ordered that until an appropriate environmental impact statement is issued, the Bureau of Land Management will issue authorization for livestock grazing only on an annual basis, a grazing lease can be renewed only on an annual basis, even though the grazing unit has been pledged as security for a bona fide loan.

Ralph H. and Jacqueline L. Rainwater, 31 IBLA 377 (Aug. 8, 1977)

Under sec. 402(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1752(c) (West Supp. 1977), the holder of an expiring grazing lease receives first priority for the new lease if the requirements of sec. 402(c) are met. Therefore, a conflicting applicant is properly denied the lease where the renewal applicant meets those requirements.

Allen R. Prouse, 32 IBLA 311 (Sept. 30, 1977)
84 I.D. 874

GRAZING LEASES--Continued

RENEWAL--Continued

Under sec. 402(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1752(c) (West Supp. 1977), the holder of an expiring lease shall be given first priority for receipt of the new lease as long as the lessee is in compliance with the rules and regulations issued and the terms and conditions in the lease. Therefore, if the holder of an expiring lease loses control of the private property contiguous to public land which gave him a preference right to a lease under 43 CFR 4121.2-1(c), he is not entitled to first priority for receipt of a new lease.

Mark X. Trask, 32 IBLA 395 (Nov. 9, 1977)

GRAZING PERMITS AND LICENSES

GENERALLY

An agreement between the BLM, a State Cooperative State Grazing District, and an individual permittee allocating a share of the Federal range for which base properties are qualified does not create a vested right to grazing privileges in the licensee or permittee, but the grazing privileges remain subject to the Federal Range Code.

Where an agreement with State agencies and the BLM is made subject to all the provisions of the Federal Range Code, the provisions of the Range Code pertaining to the transfer of range privileges and loss of base property are controlling.

Where the base property to which grazing privileges are attached is National Wildlife Range administered by the U.S. Fish and Wildlife Service, which leases the property through cooperative farming agreements to private individuals for farming, FWS's determination of who is its lessee must be accepted by the BLM.

The issuance of a grazing license for the next grazing year to a new lessee for lands in a National Wildlife Range administered by the United States Fish and Wildlife Service is not premature when the FWS has stated that the existing lease has been terminated and a new one for the next year issued to the new licensee.

The issuance of a grazing license to an applicant who controls base property, to which grazing privileges have been historically attached, and who can demonstrate that he has a year round operation, is not arbitrary or capricious.

Allan Stratman (President), Two Crow Land & Cattle Co. and William Row, Jr. (Manager), Two Crow Ranch Corp. (Appellants) v. Bureau of Land Management (Respondent), William Harris (Intervenor), 30 IBLA 243 (May 31, 1977)

In an appeal before an administrative law judge of a decision adversely affecting the interests of a grazing licensee, upon the failure of the licensee to appear and to present his case, the administrative law judge may properly dismiss the licensee's grazing appeal with prejudice pursuant to 43 CFR 4.474(b).

Fillmore Ranches, 30 IBLA 282 (June 1, 1977)

GRAZING PERMITS AND LICENSES--Continued

GENERALLY--Continued

Where there is a final administrative determination of the assessment of damages for a grazing trespass by a licensee, no license or permit should thereafter be issued or renewed until payment of the assessed amount.

Under the Supremacy Clause, U.S. Const., art. VI, cl. 2, Federal laws, including Federal grazing regulations, override conflicting State laws with respect to public lands.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

Holders of grazing permits under sec. 3 of the Taylor Grazing Act whose permits give them grazing rights for public lands which are subsequently traversed by a power line right-of-way grant have standing to appeal the decision granting the right-of-way.

David Smith Ranches, et al. (Appellants), Colorado Ute Electric Assoc., Inc. (Intervenor), 33 IBLA 7 (Nov. 15, 1977)

ADJUDICATION

Where an applicant for grazing privileges does not show the type of misconduct which would be a basis for estoppel against the Government, the provisions of 43 CFR 4115.2-1(e)(9)(i) and (e)(13)(i) cannot be waived on the basis of such misconduct.

Where base property qualifications have been recognized and grazing licenses thereon have been granted for 3 or more consecutive years to a third party, an applicant is barred by 43 CFR 4115.2-1(e)(13)(i) from seeking readjudication, although the Bureau of Land Management has the authority under subsec. (e)(13)(ii) to make adjustments when necessary to comply with the Federal Range Code for Grazing Districts.

Upon failure to apply for base property qualifications for 2 consecutive years, under 43 CFR 4115.2-1(e)(9)(i) an applicant loses any claim to grazing privileges which he had transferred to another, where the exceptions in the section are not applicable.

Upon approval of an application for transfer of class 1 qualifications, the transfer is effective as of the date of filing of the application, and the base property from which the transfer is made thereupon loses its qualifications to the extent indicated in the transfer.

A. D. Findlay (Appellant), Vermillion Cliff Cattle Co. (Intervenor), 29 IBLA 262 (Mar. 25, 1977)

ADMINISTRATIVE LAW JUDGE

In an appeal before an administrative law judge of a decision adversely affecting the interests of a grazing licensee, upon the failure of the licensee to appear and to present his case, the administrative law judge may properly dismiss the licensee's grazing appeal with prejudice pursuant to 43 CFR 4.474(b).

Fillmore Ranches, 30 IBLA 282 (June 1, 1977)

GRAZING PERMITS AND LICENSES--Continued

ADMINISTRATIVE LAW JUDGE--Continued

Administrative hearings required in grazing trespass cases are not an unlawful exercise of judicial power and meet constitutional requirements and the standards of the Administrative Procedure Act. The constitutional requirement of due process is not violated merely because an Administrative Law Judge is employed by the Department of the Interior.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

APPEALS

In an appeal before an administrative law judge of a decision adversely affecting the interests of a grazing licensee, upon the failure of the licensee to appear and to present his case, the administrative law judge may properly dismiss the licensee's grazing appeal with prejudice pursuant to 43 CFR 4.474(b).

Fillmore Ranches, 30 IBLA 282 (June 1, 1977)

BASE PROPERTY (LAND)

Generally

Land within a National Wildlife Range administered by the United States Fish and Wildlife Service and leased to individuals through a cooperative farming agreement is privately controlled land within the meaning of the pertinent regulations and qualifies base property.

Allan Stratman (President), Two Crow Land & Cattle Co. and William Row, Jr. (Manager), Two Crow Ranch Corp. (Appellants) v. Bureau of Land Management (Respondent), William Harris (Intervenor), 30 IBLA 243 (May 31, 1977)

Ownership or Control

Where an agreement with State agencies and the BLM is made subject to all the provisions of the Federal Range Code, the provisions of the Range Code pertaining to the transfer of range privileges and loss of base property are controlling.

Under 43 CFR 4115.2-1(e)(8) loss of base property results in the termination of grazing privileges based thereon so that thereafter it is not possible to obtain the transfer of the privileges to other property owned by the licensee.

Allan Stratman (President), Two Crow Land & Cattle Co. and William Row, Jr. (Manager), Two Crow Ranch Corp. (Appellants) v. Bureau of Land Management (Respondent), William Harris (Intervenor), 30 IBLA 243 (May 31, 1977)

The loss of ownership or control of base property results in the loss of grazing privileges attached thereto and requires the cancellation of the license, in the absence of a timely application for transfer of grazing privileges to new base property.

Fillmore Ranches, 30 IBLA 282 (June 1, 1977)

GRAZING PERMITS AND LICENSES--Continued

BASE PROPERTY (LAND)--Continued

Transfers

Where an agreement with State agencies and the BLM is made subject to all the provisions of the Federal Range Code, the provisions of the Range Code pertaining to the transfer of range privileges and loss of base property are controlling.

Under 43 CFR 4115.2-1(e)(8) loss of base property results in the termination of grazing privileges based thereon so that thereafter it is not possible to obtain the transfer of the privileges to other property owned by the licensee.

Where an applicant for a transfer of grazing privileges attached to base property is not a lessee without whose own operations the qualifications of the base property would not have been established, the consent of the owner of the property is reguired and where the United States Fish and Wildlife Service owns or controls the base properties, its consent is required.

Allan Stratman (President), Two Crow Land & Cattle Co. and William Row, Jr. (Manager), Two Crow Ranch Corp. (Appellants) v. Bureau of Land Management (Respondent), William Harris (Intervenor), 30 IBLA 243 (May 31, 1977)

A timely transfer of grazing license privileges to new base property may be made only while the original base property is within the ownership or control of the licensee, and transfer may not be made following sale of the original property.

Fillmore Ranches, 30 IBLA 282 (June 1, 1977)

BASE PROPERTY (WATER)

Where base property qualifications have been recognized and grazing licenses thereon have been granted for 3 or more consecutive years to a third party, an applicant is barred by 43 CFR 4115.2-1(e)(13)(i) from seeking readjudication, although the Bureau of Land Management has the authority under subsec. (e)(13)(ii) to make adjustments when necessary to comply with the Federal Range Code for Grazing Districts.

Upon failure to apply for base property qualifications for 2 consecutive years, under 43 CFR 4115.2-1(e)(9)(i) an applicant loses any claim to grazing privileges which he had transferred to another, where the exceptions in the section are not applicable.

Upon approval of an application for transfer of class 1 qualifications, the transfer is effective as of the date of filing of the application, and the base property from which the transfer is made thereupon loses its qualifications to the extent indicated in the transfer.

A. D. Findlay (Appellant), Vermillion Cliff Cattle Co. (Intervenor), 29 IBLA 262 (Mar. 25, 1977)

GRAZING PERMITS AND LICENSES--Continued

CANCELLATION OR REDUCTION

The loss of ownership or control of base property results in the loss of grazing privileges attached thereto and reguires the cancellation of the license, in the absence of a timely application for transfer of grazing privileges to new base property.

Fillmore Ranches, 30 IBLA 282 (June 1, 1977)

FEDERAL RANGE CODE

Where base property qualifications have been recognized and grazing licenses thereon have been granted for 3 or more consecutive years to a third party, an applicant is barred by 43 CFR 4115.2-1(e)(13)(i) from seeking readjudication, although the Bureau of Land Management has the authority under subsec. (e)(13)(ii) to make adjustments when necessary to comply with the Federal Range Code for Grazing Districts.

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Upon approval of an application for transfer of class 1 qualifications, the transfer is effective as of the date of filing of the application, and the base property from which the transfer is made thereupon loses its qualifications to the extent indicated in the transfer.

A. D. Findlay (Appellant), Vermillion Cliff Cattle Co. (Intervenor), 29 IBLA 262 (Mar. 25, 1977)

HEARINGS

In an appeal before an administrative law judge of a decision adversely affecting the interests of a grazing licensee, upon the failure of the licensee to appear and to present his case, the administrative law judge may properly dismiss the licensee's grazing appeal with prejudice pursuant to 43 CFR 4.474(b).

Fillmore Ranches, 30 IBLA 282 (June 1, 1977)

TRESPASS

One who grazes livestock in a grazing allotment without authorization prior to the issuance of a license commits a grazing trespass.

Under existing regulations, where a grazing trespass is not clearly willful, damages are to be computed at the rate of $2 per AUM of Federal forage consumed or the commercial rate, whichever is greater.

Where there is a final administrative determination of the assessment of damages for a grazing trespass by a licensee, no license or permit should thereafter be issued or renewed until payment of the assessed amount.

When 33 percent of the available forage in a grazing allotment is on Federal land and the remainder is on private land, it is appropriate to find that 33 percent of the forage consumed by cattle throughout the allotment

GRAZING PERMITS AND LICENSES--Continued

TRESPASS--Continued

was Federal forage, in the absence of evidence to the contrary.

Pursuant to the Property Clause of the U.S. Const. art. IV, § 3, cl. 2, Congress has enacted the Taylor Grazing Act, 43 U.S.C. § 315 et seq. (1970), and other statutory authority which empower the Secretary of the Interior to define what conduct constitutes a grazing trespass and to determine whether or not an individual has committed a trespass.

There is no constitutional right to a jury trial in an administrative proceeding such as a grazing trespass hearing.

Administrative hearings required in grazing trespass cases are not an unlawful exercise of judicial power and meet constitutional requirements and the standards of the Administrative Procedure Act. The constitutional requirement of due process is not violated merely because an Administrative Law Judge is employed by the Department of the Interior.

Where cattle are admitted to an allotment at the beginning of the usual grazing season but prior to the issuance of a license for that season, and payment is later made by a check which recites that it is "payment in full for 1975 grazing fee," the Bureau of Land Management may properly deposit the check, allotting part of the proceeds for the grazing license for the rest of the season, and deposit the remainder of the proceeds in a suspense account pending resolution of the trespass. Such action indicates that the check was not accepted in settlement of the trespass damages, and cashing the check does not constitute an accord and satisfaction of the trespass damages.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

HEARINGS
(See also Administrative Procedure, Federal Coal Mine Health and Safety Act of 1969, Geothermal Leases, Grazing Permits and Licenses, Indian Probate, Mining Claims, Multiple Mineral Development Act, Rules of Practice, Surface Resources Act.)

Where the Bureau of Land Management orders a resurvey of a section to identify the boundaries of public land within the section, a private landowner may protest the resurvey and, where the protesting landowner points up a serious contradiction between the resurvey and the topographic calls accompanying the original plat, it is proper to remand the case for a fact hearing.

Domenico A. Tussio, et al., 30 IBLA 92 (Apr. 29, 1977)

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented

HEARINGS--Continued

evidence raising an issue of fact regarding the status of the well.

Universal Resources Corp., et al., 31 IBLA 61 (June 23, 1977)

The rule of evidence excluding hearsay is not strictly adhered to in administrative proceedings, particularly where the evidence, such as assay reports with a proper foundation concerning the sampling, submission of the samples for assaying, and the reputation of the assayer, is competent and relevant. After such reports are admitted, the factfinder may give them appropriate weight according to the circumstances surrounding the specific report.

United States v. Robert A. Rukke (Registered Agent), Valumines, Inc., et al., 32 IBLA 155 (Sept. 12, 1977)

After holding a hearing pursuant to the Administrative Procedure Act, an Administrative Law Judge may properly find that a person has committed a grazing trespass if that finding is in accordance with and supported by reliable, probative, and substantial evidence. Because a grazing trespass proceeding is not a criminal proceeding, it need not be proved beyond a reasonable doubt that a particular individual committed the trespass.

There is no constitutional right to a jury trial in an administrative proceeding such as a grazing trespass hearing.

Administrative hearings required in grazing trespass cases are not an unlawful exercise of judicial power and meet constitutional requirements and the standards of the Administrative Procedure Act. The constitutional requirement of due process is not violated merely because an Administrative Law Judge is employed by the Department of the Interior.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

An applicant has no right to a hearing in connection with original Federal charges for use and occupancy of a communication site, and in the absence of any specific assertion showing error in the appraisal, the appraisal will be sustained on appeal if it is properly formulated.

XYZ Television, Inc., 33 IBLA 80 (Dec. 8, 1977)

HOMESTEADS (ORDINARY)
(See also Stock-raising Homesteads.)

GENERALLY

Where a homestead entryman has cleared and broken ground and allowed a portion of the cleared, plowed acreage to grow up with a species of native wheat grass, such acreage is not "cultivated" within the meaning of 43 CFR 2567.5(b), and the entryman's final proof is properly rejected where it shows on its face that the native grass acreage constituted an indispensable portion of the entryman's attempt at meeting the cultivation requirements of the homestead laws. Since

HOMESTEADS (ORDINARY)--Continued

GENERALLY--Continued

there was not substantial compliance with the cultivation requirements, equitable adjudication cannot be properly invoked.

Clarence Ray Mathis, 29 IBLA 150 (Mar. 4, 1977)

A request to reconsider a 1968 decision by the Department rejecting final proof for a homestead entry and canceling the entry is properly rejected in the absence of a showing of "extraordinary circumstances." In the absence of compelling legal or equitable reasons for reconsideration, the principle of res judicata, and its counterpart, finality of administrative action, will operate to bar consideration of a new appeal arising from a later proceeding involving the same claim and the same issues.

Pekka K. Merikallio, 30 IBLA 157 (May 18, 1977)

The filing of a petition-application is treated as a petition for classification of the land. The mere filing of the application does not vest in the applicant any interest in the land and repeal of the authorizing statute mandates rejection of the application.

Arthur R. Wallace, 30 IBLA 239 (May 31, 1977)

Where the initial actions of a homesteader are inconsistent in that he appears to initiate his claim both by settlement and by application for allowed entry, the nature of his claim will be determined by the type of official form used by him to initiate the claim, and by his actions with regard thereto.

John Anthony Consla v. Robert L. Wetherelt, 30 IBLA 311 (June 6, 1977)

By regulation, final proof of compliance with the homestead laws must be filed within 5 years, failing which the homestead is subject to cancellation, although, in proper cases the time for filing final proof may be extended. However, the statutory life of a homestead claim or entry cannot be extended beyond 5 years, during which time all other requirements must be performed. An extension of the time for filing final proof is not an extension of the time for performing acts of compliance.

Where during the 5-year term of a homestead there is a failure to comply with the residence and cultivation requirements and the requirement of a habitable house, and where subsequent efforts meet only the requirement for a habitable house, there can be no equitable adjudication based on substantial compliance with the homestead law.

Henry E. Reeves, 31 IBLA 242 (July 18, 1977)

HOMESTEADS (ORDINARY)--Continued

AMENDMENT

Where a homestead entry has been located on land later included within a withdrawal "subject to valid existing rights," the withdrawal attaches to the land within the homestead upon cancellation of the entry. An amendment of a homestead entry cannot include lands within a canceled adjoining entry to which a withdrawal has attached.

Pekka K. Merikallio, 30 IBLA 157 (May 18, 1977)

APPLICATIONS

The statement by the BLM State Office that appellant's petition-application is regular on its face is merely a preliminary determination the application will be considered and the process will be set in motion to classify the land. The decision to classify land for a certain purpose is discretionary with the Secretary of the Interior.

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Arthur R. Wallace, 30 IBLA 239 (May 31, 1977)

Where the initial actions of a homesteader are inconsistent in that he appears to initiate his claim both by settlement and by application for allowed entry, the nature of his claim will be determined by the type of official form used by him to initiate the claim, and by his actions with regard thereto.

Where a homestead in Alaska is initiated by an application for allowed entry, the filing of the application creates a valid existing right which is protected from the effect of a subsequent withdrawal which is subject to valid existing rights.

Where a homestead in Alaska is initiated by an application to enter, the statutory period for compliance with the requirements of the homestead laws begins to run on the date of allowance of the entry.

John Anthony Consla v. Robert L. Wetherelt, 30 IBLA 311 (June 6, 1977)

A petition-application for a homestead entry outside of Alaska requires classification of the land, confers no rights upon an applicant and must be rejected because the Federal Land Policy and Management Act repealed the homestead laws effective on the date of the Act as to lands outside Alaska.

Daniel A. Anderson, 31 IBLA 162 (July 1, 1977)

HOMESTEADS (ORDINARY)--Continued

CLASSIFICATION

The statement by the BLM State Office that appellant's petition-application is regular on its face is merely a preliminary determination the application will be considered and the process will be set in motion to classify the land. The decision to classify land for a certain purpose is discretionary with the Secretary of the Interior.

The filing of a petition-application is treated as a petition for classification of the land. The mere filing of the application does not vest in the applicant any interest in the land and repeal of the authorizing statute mandates rejection of the application.

Arthur R. Wallace, 30 IBLA 239 (May 31, 1977)

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Daniel A. Anderson, 31 IBLA 162 (July 1, 1977)

CONTESTS

A contest complaint is properly dismissed where the only basis for cancellation of the homestead suggested by it is failure to comply with the residence and cultivation requirements of the homestead law, and where the time for compliance with these requirements by the entryman has not yet begun.

John Anthony Consla v. Robert L. Wetherelt, 30 IBLA 311 (June 6, 1977)

CULTIVATION

Cultivation of a homestead entry must include the breaking, planting or seeding and tillage for a crop and be done in such a manner as to be reasonably calculated to produce profitable results.

The acts performed in attempted satisfaction of the cultivation requirements of the homestead law must be done in good faith seeking to establish a profitable agricultural operation on the entry.

An entryman who performs the minimum acts of cultivation, and seeds late in the last growing season and soon thereafter files final proof, who does not visit the entry to see the results of his attempts or pursue any further agricultural activity on the entry, and who does not establish that he had a market or use for the crop he could have grown, and where the results are meager, has not demonstrated that he made a good faith attempt to comply with the agricultural requirements of the homestead act.

United States v. Leonard F. Nelson (Supp. I), 28 IBLA 314 (Jan. 14, 1977)

HOMESTEADS (ORDINARY)--Continued

CULTIVATION--Continued

Where a homestead entryman has cleared and broken ground and allowed a portion of the cleared, plowed acreage to grow up with a species of native wheat grass, such acreage is not "cultivated" within the meaning of 43 CFR 2567.5(b), and the entryman's final proof is properly rejected where it shows on its face that the native grass acreage constituted an indispensable portion of the entryman's attempt at meeting the cultivation requirements of the homestead laws. Since there was not substantial compliance with the cultivation requirements, equitable adjudication cannnot be properly invoked.

Clarence Ray Mathis, 29 IBLA 150 (Mar. 4, 1977)

Wherein one year the homestead land is leveled and seed is hand broadcast on the ground in late October after the first frost in Alaska, and the following year seed is simply scattered on the snow by a claimant who asserts he is "not a farmer at all" and does not know whether this is accepted practice, the cultivation requirements of the law have not been substantially met.

A homestead claimant who contracts for the planting of "enough acreage to satisfy the homestead law" in an essentially worthless hay crop in an area of Alaska where there are no livestock, and with no intention to harvest or utilize it even though it successfully matured, has performed only a token compliance which is, prima facie, demonstrative of bad faith. A good faith devotion of the land to productive and profitable agricultural use is essential to satisfy the purpose and intent of the agricultural land entry laws.

Henry E. Reeves, 31 IBLA 242 (July 18, 1977)

FINAL PROOF

By regulation, final proof of compliance with the homestead laws must be filed within 5 years, failing which the homestead is subject to cancellation, although, in proper cases the time for filing final proof may be extended. However, the statutory life of a homestead claim or entry cannot be extended beyond 5 years, during which time all other requirements must be performed. An extension of the time for filing final proof is not an extension of the time for performing acts of compliance.

Henry E. Reeves, 31 IBLA 242 (July 18, 1977)

LANDS SUBJECT TO

Where a homestead entry has been located on land later included within a withdrawal "subject to valid existing rights," the withdrawal attaches to the land within the homestead upon cancellation of the entry. An amendment of a homestead entry cannot include lands within a canceled adjoining entry to which a withdrawal has attached.

Pekka K. Merikallio, 30 IBLA 157 (May 18, 1977)

HOMESTEADS (ORDINARY)--Continued

LANDS SUBJECT TO--Continued

A powersite classification effects withdrawal of lands to the full extent described therein as of publication in the Federal Register, even if the extent of the land withdrawn by it is not accurately entered subsequently on land-status maps, and, notwithstanding this error, lands classified by it are withdrawn under sec. 24 of the Federal Power Act from settlement under the homestead laws, so that a notice of location settlement claim and final proof concerning these lands is properly rejected.

Henry E. Reeves, 31 IBLA 242 (July 18, 1977)

RESIDENCE

To establish residency on a homestead there must be the intent to make the desired public lands the entryman's home, and also the intent to no longer have a home at the former residence; the law permits an entryman to have two residences, but he may have only one home.

An entryman who, at the time he seeks to establish residence on the entry, owns a house which he leases furnished for 6 and 1/2 months and to which he returns a few days after he has completed the required 7 months on the entry did not establish his home on the entry in good faith, and thus has not met the residence requirement of the homestead law.

A homestead entry made with no intention of establishing a permanent bona fide home on the entry, but merely with a view to submitting a showing sufficient to support occupancy for the briefest time permitted under the law must be canceled, notwithstanding the proof offered shows full technical compliance with respect to inhabitancy of the land for the period required by the law.

United States v. Leonard F. Nelson (Supp. I), 28 IBLA 314 (Jan. 14, 1977)

SETTLEMENT

Where the initial actions of a homesteader are inconsistent in that he appears to initiate his claim both by settlement and by application for allowed entry, the nature of his claim will be determined by the type of official form used by him to initiate the claim, and by his actions with regard thereto.

John Anthony Consla v. Robert L. Wetherelt, 30 IBLA 311 (June 6, 1977)

Where a notice of location of settlement claim is filed covering land which is not available for entry, the notice must be rejected and cannot be suspended to await the possible restoration of the land to entry.

A powersite classification effects withdrawal of lands to the full extent described therein as of publication in the Federal Register, even if the extent of the land withdrawn by it is not accurately entered subsequently on land-status maps, and, notwithstanding this error, lands classified by it are withdrawn under sec. 24 of the Federal Power Act from settlement under the homestead laws, so that a notice of location settlement

HOMESTEADS (ORDINARY)--Continued

SETTLEMENT--Continued

claim and final proof concerning these lands is properly rejected.

Henry E. Reeves, 31 IBLA 242 (July 18, 1977)

INDIAN ALLOTMENTS ON PUBLIC DOMAIN

GENERALLY

A reservation of geothermal resources must be imposed upon a patent issued for an Indian allotment under the fourth section of the General Allotment Act on land known to be valuable for such geothermal resources, even though the allotment is based upon settlement established prior to any withdrawal of the public domain and antedated the knowledge of the geothermal resources, but the application for patent was made subsequent to an application for withdrawal of the land to protect the geothermal resources.

Heirs of Carrie Bethel, 29 IBLA 210 (Mar. 22, 1977)

With respect to Indian allotments on national forest lands, the Secretary of Agriculture or his delegate is required by statute to determine whether the land is more valuable for agriculture or grazing purposes than for the timber thereon. Once the conclusion that the land is more valuable for agriculture or grazing is reached, it is the function of the Secretary of the Interior and/or his delegate to adjudicate the application including determination of the legal sufficiency of applicant's use and occupancy.

The granting of an Indian allotment in a national forest, assuming that the statutory criteria have been met, is within the discretion of the Secretary of the Interior and is not a mere ministerial duty.

Viability of an Indian allotment from an economic standpoint is a legitimate consideration in the exercise of the Secretary's discretionary authority over allotments. However, land in an Indian allotment application may be considered together with adjacent land owned by the applicant in determining viability. Past history of use of the land to provide a livelihood is a relevant factor.

Lorinda L. Hulsman, 32 IBLA 280 (Sept. 27, 1977)

CLASSIFICATION

With respect to Indian allotments on national forest lands, the Secretary of Agriculture or his delegate is required by statute to determine whether the land is more valuable for agriculture or grazing purposes than for the timber thereon. Once the conclusion that the land is more valuable for agriculture or grazing is reached, it is the function of the Secretary of the Interior and/or his delegate to adjudicate the application including determination of the legal sufficiency of applicant's use and occupancy.

Lorinda L. Hulsman, 32 IBLA 280 (Sept. 27, 1977)

INDIAN ALLOTMENTS ON PUBLIC DOMAIN--Continued

LANDS SUBJECT TO

A reservation of geothermal resources under the Geothermal Steam Act of 1970 may be inserted in a patent issued for an Indian allotment granted under the fourth section of the General Allotment Act.

Heirs of Carrie Bethel, 29 IBLA 210 (Mar. 22, 1977)

INDIAN LANDS
(See also Indian Probate.)

GENERALLY

The Department of the Interior does not have the authority to modify a statute ratifying an agreement with an Indian tribe on the grounds of fraud or coercion in the execution of the agreement.

Title to Certain Land Within the Boundaries of the Fort Yuma Indian Reservation as Established by the Executive Order of Jan. 9, 1884, M-36886 (Jan. 18, 1977)
84 I.D. 1

The provision in 43 CFR 3825.1(b) that failure to pay annual rental on or before the anniversary date of a mining claim located in the Papago Indian Reservation "shall be deemed sufficient grounds for invalidating the claim" is directory, not mandatory. Where the mining claimant does not pay rental for 2 years on two claims and is 1-1/2 years late on other claims, and where he has not paid the rental prior to receiving decisions from the Bureau of Land Management holding the claims invalid, the mining claims must be held invalid.

Louis B. Ellsworth, Jr., 33 IBLA 26 (Nov. 22, 1977)

CEDED LANDS

The Agreement of Dec. 4, 1893, between the Yuma (now Quechan) Indians and the United States, ratified in sec. 17 of the Act of Aug. 15, 1894, was an absolute, present cession of any and all interests of the Indians to the nonirrigable lands in the Fort Yuma Indian Reservation created by Executive Order of Jan. 9, 1884.

Sec. 25 of the Act of Apr. 21, 1904, which authorized the application of the Reclamation Act of 1902 to the Yuma Indian Reservation, did not repeal by implication sec. 17 of the Act of Aug. 15, 1894, which provided for the cession, reclamation and allotment of the Reservation, and is in no way inconsistent with the 1894 Act.

Assuming that the Act of Aug. 15, 1894, was a conditional rather than an absolute cession by the Yuma (now Quechan) Indians of their rights to the nonirrigable lands in the Fort Yuma Indian Reservation, all material conditions on the part of the United States were met, and the cession has occurred.

The administrative treatment of land as reservation land under the jurisdiction of the Bureau of Indian Affairs for many purposes is not dispositive of the status of the land in the face of clear legislation demonstrating that it was absolutely ceded, even without conflicting administrative treatment of the lands as public domain or under the jurisdiction of the

INDIAN LANDS--Continued

CEDED LANDS--Continued

Reclamation Service. The Department has the authority to resolve disputes and correct errors in the status of lands within its jurisdiction.

Title to Certain Land Within the Boundaries of the Fort Yuma Indian Reservation as Established by the Executive Order of Jan. 9, 1884, M-36886 (Jan. 18, 1977)
84 I.D. 1

GRAZING

Generally

The Bureau of Indian Affairs is not required to withdraw allotted land from a range unit designated for grazing in accordance with 25 CFR 151 merely because a majority of the owners in the allotment have requested withdrawal.

Administrative Appeal of Iris Bear Heels v. Aberdeen Area Director, 6 IBIA 253 (Dec. 15, 1977)

Appeals

Generally

A person who has no interest that would be adversely affected by the outcome of an appeal is not an interested party and service of an appeal on such person is not necessary under 25 CFR 2.11(a).

Administrative Appeal of James Rosenberg v. Area Director, Portland Area Office, 6 IBIA 124 (Aug. 1, 1977)
84 I.D. 439

Sales

Generally

Submission of more than one bid on any one unit by any given bidder is considered proper unless prohibited by the sale terms.

Administrative Appeal of James Rosenberg v. Area Director, Portland Area Office, 6 IBIA 124 (Aug. 1, 1977)
84 I.D. 439

Indian Preference

Generally

Privilege of meeting high sealed bids of non-Indians in grazing sales is limited to adult tribal members, Indian corporations and Indian Associations according to preference determined by the governing body and concurred in writing by the Area Director.

Administrative Appeal of Jake Ring, et al. v. Area Director, Aberdeen, 6 IBIA 137 (Aug. 10, 1977)

INDIAN LANDS--Continued

LEASES AND PERMITS

Generally

Where an oil and gas lease on Indian allotted lands provides for a term of years and as much longer thereafter as oil and gas is produced in paying quantities, upon failure to achieve production during the primary period the lease terminates by its own terms.

An oil and gas lease on Indian lands will not be extended beyond the primary term by the mere assertion of the lessee, after the lease has expired, that the lease had been committed to a unitized area which contained a producing well. Where the record shows that the lessee did not comply with the terms of the lease or the regulations requiring the lease to affirmatively seek approval of the Secretary of the Interior to officially commit the lease to a producing unit, outside events had no effect on the lease, and the lease expired by its own terms.

A communitization agreement involving an oil and gas lease for Cheyenne-Arapaho allotted lands may properly be approved by the Area Director, BIA, pursuant to 25 CFR 172.24 where that agreement incorporates all the terms and conditions of a State pooling order which joined the lessee with all other holders of mineral interests in the other tracts involved in the unit agreement.

Cotton Petroleum Corp. v. Samedan Oil Corp., 29 IBLA 13 (Feb. 8, 1977)

Oil and gas produced from leases of Fort Peck tribal lands cannot be taxed by the State of Montana.

The taxation proviso contained in 25 U.S.C. § 398 (1970) does not apply to leases entered into under the 1938 Mineral Leasing Act (25 U.S.C. §§ 396a-396f (1970)). States cannot tax the production of oil and gas from such leases.

Tax Status of the Production of Oil and Gas from Leases of Fort Peck Tribal Lands under the 1938 Mineral Leasing Act, M-36896 (Nov. 7, 1977) 84 I.D. 905

Long-term Business

Generally

If definition of gross receipts and other pertinent lease provisions governing rental consideration are unambiguous the plain terms must control. Otherwise, resort may be had to rules of construction and relevant parol evidence to assist in ascertaining the intentions of the parties.

Administrative Appeals of Thunderbird Theater Co., Inc., Selom F. and Marian T. Burns, Shell Oil Co. v. Commissioner, Bureau of Indian Affairs, et al., 6 IBIA 240 (Nov. 29, 1977)

INDIAN LANDS--Continued

LEASES AND PERMITS--Continued

Oil and Gas

Where an oil and gas lease on Indian allotted lands provides for a term of years and as much longer thereafter as oil and gas is produced in paying quantities, upon failure to achieve production during the primary period the lease terminates by its own terms.

An oil and gas lease on Indian lands will not be extended beyond the primary term by the mere assertion of the lessee, after the lease has expired, that the lease had been committed to a unitized area which contained a producing well. Where the record shows that the lessee did not comply with the terms of the lease or the regulations requiring the lease to affirmatively seek approval of the Secretary of the Interior to officially commit the lease to a producing unit, outside events had no effect on the lease, and the lease expired by its own terms.

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Tax Status of the Production of Oil and Gas from Leases of Fort Peck Tribal Lands under the 1938 Mineral Leasing Act, M-36896 (Nov. 7, 1977) 84 I.D. 905

OIL AND GAS LEASING

Generally

An oil and gas lease offer must be rejected as to lands applied for which are held in trust for Indians and are not available under the Mineral Leasing Act. Even though the minerals in these lands have been reserved to the United States, mineral development is not possible at this time because the language of the exchange act under which the lands were acquired requires further promulgation of special regulations by the Secretary as a condition precedent to such development.

Thomas D. Chace, 31 IBLA 13 (June 17, 1977)

Allotted Lands

Where an oil and gas lease on Indian allotted lands provides for a term of years and as much longer thereafter as oil and gas is produced in paying quantities, upon failure to achieve production during the primary period the lease terminates by its own terms.

Cotton Petroleum Corp. v. Samedan Oil Corp., 29 IBLA 13 (Feb. 8, 1977)

INDIAN LANDS--Continued

RESERVATION BOUNDARY

Once boundaries of a reservation are established, neither the boundaries nor title to tracts within them can be altered or abolished without a clear statement of Congressional intent to do so.

Opinion on the Boundaries of and Status of Title to Certain Lands Within the Colville and Spokane Indian Reservations, M-36887 (Feb. 2, 1977) 84 I.D. 72

RIGHTS-OF-WAY

It was not error for the administrative law judge to interpret ambiguous provisions of the subject right-of-way as if they were agreed to in an easement by contract through consideration of the intentions of the parties. If the easement was created by Federal grant, intentions of the parties could still be examined to resolve ambiguous language.

The intention of the parties was that appellant would consummate a lease of tribal tidelands as a condition to receiving the grant of a right-of-way over the tidelands.

Appellant was required to complete a lease of tribal tidelands before it could subject them to public use. The foremost condition of the right-of-way grant was that the public not have access to tribal tidelands before a shellfish protection plan could be incorporated in a lease of the tidelands.

There was an unauthorized opening of the right-of-way by appellant before completion of a tidelands lease agreement.

Appellant was required to make improvements on the right-of-way before it could be opened to the public. The Bureau of Indian Affairs was entitled to cancel the right-of-way grant in accordance with 25 CFR 161.20(a) when appellant violated this condition.

Administrative Appeal of Whatcom County Park Board (Appellant) v. Area Director, Portland Area Office, Bureau of Indian Affairs (Respondent), Lummi Indian Tribe (Intervenor), 6 IBIA 196 (Nov. 28, 1977) 84 I.D. 938

SUB-SURFACE ESTATES

An oil and gas lease offer must be rejected as to lands applied for which are held in trust for Indians and are not available under the Mineral Leasing Act. Even though the minerals in these lands have been reserved to the United States, mineral development is not possible at this time because the language of the exchange act under which the lands were acquired requires further promulgation of special regulations by the Secretary as a condition precedent to such development.

Thomas D. Chace, 31 IBLA 13 (June 17, 1977)

INDIAN LANDS--Continued

TAXATION

The taxation proviso contained in 25 U.S.C. § 398 (1970) does not apply to leases entered into under the 1938 Mineral Leasing Act (25 U.S.C. §§ 396a-396f (1970)). States cannot tax the production of oil and gas from such leases.

Tax Status of the Production of Oil and Gas from Leases of Fort Peck Tribal Lands under the 1938 Mineral Leasing Act, M-36896 (Nov. 7, 1977) 84 I.D. 905

TRIBAL RIGHTS IN ALLOTTED LANDS

A statutory option held by the Tribe to take such interests in lands which pass to specific heirs or devisees who are not enrolled members of the Tribe does not vest any rights in said interests until payment by the Tribe of the fair-market value as determined by the Administrative Law Judge, after hearing if demanded, plus unpaid interest.

Fair-market value date is considered to be the date of hearing to determine value or if no hearing, the date the Judge makes an independent finding and judgment as to the fair-market value of the interest to be taken.

Estate of Edward Lewis Pitt, 6 IBIA 156 (Oct. 17, 1977) 84 I.D. 854

INDIAN PROBATE
(See also Indian Lands and Indian Tribes.)

100.0 GENERALLY

The Department of the Interior does not have authority to declare a Federal statute unconstitutional.

Estate of William (Konoa) Jackson, 6 IBIA 52 (May 4, 1977)

Omitted Indian heirs are entitled to an order showing their relationship to decedent as a matter of protecting their heritage, regardless of the de minimis value of the estate.

Estate of Alexander Joseph Williams, 6 IBIA 132 (Aug. 2, 1977)

ADMINISTRATIVE PROCEDURE

105.0 Generally

The Administrative Law Judge's order determining heirs failed to satisfy requirements of the Administrative Procedure Act because of the absence of a statement of "findings and conclusions, and the reasons or basis therefore, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C.A. § 557(c). Under this circumstance, we believe it is

INDIAN PROBATE--Continued

ADMINISTRATIVE PROCEDURE--Continued

105.0 Generally--Continued

appropriate to consider appellant's new evidence on appeal and we conclude that such evidence justifies a rehearing on the issue of decedent's marital status prior to Dec. 16, 1953.

Estate of Mitchell Robert Quaempts (Kuneki), 6 IBIA 10 (Jan. 27, 1977)

ADOPTION (See also CHILDREN, ADOPTED)

110.0 Generally

An alleged adoption cannot be recognized where it has not been effected under any of the provisions of 25 U.S.C. § 372a (1970).

Estate of William (Konoa) Jackson, 6 IBIA 52 (May 4, 1977)

APPEAL

130.4 Matters Considered on Appeal

To apply the doctrine that newly discovered evidence shall not be considered on appeal would be unjust to appellant in this case who by virtue of the lack of findings and conclusions in the Administrative Law Judge's original order was unable to perceive the nature of new evidence required to support a valid petition for rehearing.

Estate of Mitchell Robert Quaempts (Kuneki), 6 IBIA 10 (Jan. 27, 1977)

CLAIM AGAINST ESTATE (See also DIVORCE)

165.2 Care and Support

A claim for services rendered the decedent has been consistently denied where there is no evidence of any agreement to pay at the time the services were alleged to have been rendered, and no expectation on the part of the claimant that they would be paid for.

Estate of Edith Anderson Pretty Bird Ferron, 6 IBIA 41 (Mar. 17, 1977)

A general promise of compensation given by decedent for care and support of decedent's daughter is not invalid or unenforceable merely because specific sums or terms of compensation were not recited in the promise.

Estate of Lucille Mathilda Callous Leg Ireland, 6 IBIA 120 (July 21, 1977)

INDIAN PROBATE--Continued

COMPROMISE SETTLEMENTS

175.0 Generally

Absent approval by an authorized representative of the Secretary of the Interior a document purporting to constitute a primary devisee's relinquishment of her inherited interest of a deceased Indian's trust estate can be given no effect. Nor can such an instrument be the basis for a compromise settlement pursuant to 43 CFR 4.207 when the primary devisee disavows the alleged agreement before the Administrative Law Judge.

Estate of Charles Red Breath Bear, 6 IBIA 36 (Feb. 14, 1977) 84 I.D. 97

DETERMINATION OF HEIRS BY WAIVER OR AGREEMENT

200.0 Generally

Absent approval by an authorized representative of the Secretary of the Interior a document purporting to constitute a primary devisee's relinquishment of her inherited interest of a deceased Indian's trust estate can be given no effect. Nor can such an instrument be the basis for a compromise settlement pursuant to 43 CFR 4.207 when the primary devisee disavows the alleged agreement before the Administrative Law Judge.

Estate of Charles Red Breath Bear, 6 IBIA 36 (Feb. 14, 1977) 84 I.D. 97

EVIDENCE

225.0 Generally

Department rules of evidence permit consideration of affidavits or other evidence not ordinarily admissible under the generally accepted rules of evidence. When a crucial witness who stands to gain nothing from the outcome of an estate is prevented from personally appearing at a hearing for reasons of health, her sworn testimony by way of affidavit should be given due consideration. Here, such an affidavit was also bolstered by other probative evidence.

Estate of Alexander Joseph Williams, 6 IBIA 132 (Aug. 2, 1977)

225.1 Conflicting Testimony

An Administrative Law Judge's findings based on that part of the evidence which printed words do not preserve, such as demeanor and conduct of witnesses, are not ordinarily reviewable. This case however turns on interpretation of documentary evidence and affidavits which this panel is equally qualified to evaluate on appeal.

Estate of Alexander Joseph Williams, 6 IBIA 132 (Aug. 2, 1977)

INDIAN PROBATE--Continued

EVIDENCE--Continued

225.4 Newly Discovered Evidence

To apply the doctrine that newly discovered evidence shall not be considered on appeal would be unjust to appellant in this case who by virtue of the lack of findings and conclusions in the Administrative Law Judge's original order was unable to perceive the nature of new evidence required to support a valid petition for rehearing.

The Administrative Law Judge's order determining heirs failed to satisfy requirements of the Administrative Procedure Act because of the absence of a statement of "findings and conclusions, and the reasons or basis therefore, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C.A. § 557(c). Under this circumstance, we believe it is appropriate to consider appellant's new evidence on appeal and we conclude that such evidence justifies a rehearing on the issue of decedent's marital status prior to Dec. 16, 1953.

Estate of Mitchell Robert Quaempts (Kuneki), 6 IBIA 10 (Jan. 27, 1977)

Newly discovered evidence may be presented in support of the petition for rehearing but the Board is not required to consider it on appeal.

Estate of Hank Cluette, 6 IBIA 47 (Apr. 1, 1977)

HEARING (See also REHEARING, ADMINISTRATIVE PROCEDURE.)

255.4 Notice

Agency Superintendents are required to furnish all wills in their custody to the Administrative Law Judge upon the maker's death, not only the latest will, since a decedent's purported last will and testament shall not be deemed valid "unless and until it shall have been approved by the Secretary of the Interior." 25 U.S.C. § 373 (1970). Accordingly, the term "each party in interest" to whom specific notice of hearing is required by 43 CFR 4.211(b), should include all devisees of all wills of a decedent which are in the Superintendent's custody at decedent's death, as well as decedent's heirs at law.

Estate of Fannie Newrobe Choate, 6 IBIA 144 (Sept. 9, 1977)

INDIAN REORGANIZATION ACT of June 18, 1934 (WHEELER-HOWARD ACT) (25 U.S.C. § 464 et seq.)

270.0 Generally

The Act recognizes two classes of persons who may take testator's lands by devise, that is, any member of the Tribe having jurisdiction over such lands and legal heirs of the testator.

Estate of William (Konoa) Jackson, 6 IBIA 52 (May 4, 1977)

INDIAN PROBATE--Continued

INDIAN REORGANIZATION ACT of June 18, 1934 (WHEELER-HOWARD ACT) (25 U.S.C. § 464 et seq.) --Continued

270.0 Generally--Continued

The Indian Reorganization Act, generally, recognizes two classes of persons who may take testator's lands by devise, that is, any member of the tribe having jurisdiction over lands and legal heirs of the testator.

Estate of Phoebe Shanta Wilson, 6 IBIA 75 (May 12, 1977) 84 I.D. 187

270.1 Construction of Section 4

"Any heir of such member" as used in sec. 464 means those who would, in the absence of a will, have been entitled to share in the estate.

Estate of William (Konoa) Jackson, 6 IBIA 52 (May 4, 1977)

270.2 Nonapplicability

Certain provisions of the Indian Reorganization Act, including the section which dictates who may take testator's land by devise, do not apply to certain named Indian tribes in Oklahoma, including the Kiowa, Comanche, and Apache tribes.

Estate of Phoebe Shanta Wilson, 6 IBIA 75 (May 12, 1977) 84 I.D. 187

PLEADING (See also APPEAL, PETITION FOR REHEARING.)

355.1 Extension of Time

A timely request for an extension of time was submitted to the appropriate office on Oct. 15, 1976, as a result of the personal visit by appellant's representative to the Agency Superintendent that day, during which time Bureau assistance was provided in drafting such request.

Where an extension request was sent to the wrong office for filing on account of incorrect advice from Department personnel who are responsible for knowing right procedures, the Department is estopped from denying such request on grounds that it was not filed at the proper place.

Estate of James Andrews White, a/k/a James P. Andrews, 6 IBIA 79 (May 24, 1977) 84 I.D. 241

RECONSIDERATION (See also Section 130.5.)

365.0 Generally

Indian probate regulations do not contain any provisions for reconsideration of a matter which has been finally determined by the Secretary of the Interior, yet he has the inherent power to reopen and review administrative determinations when some new factors

INDIAN PROBATE--Continued

RECONSIDERATION (See also Section 130.5.)--Continued

365.0 Generally--Continued

such as newly discovered evidence or fraud are involved.

Estate of Peter Feather Earring Cleveland, 6 IBIA 118 (July 15, 1977)

REHEARING

370.0 Generally

To apply the doctrine that newly discovered evidence shall not be considered on appeal would be unjust to appellant in this case who by virtue of the lack of findings and conclusions in the Administrative Law Judge's original order was unable to perceive the nature of new evidence required to support a valid petition for rehearing.

The Administrative Law Judge's order determining heirs failed to satisfy requirements of the Administrative Procedure Act because of the absence of a statement of "findings and conclusions, and the reasons or basis therefore, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C.A. § 557(c). Under this circumstance, we believe it is appropriate to consider appellant's new evidence on appeal and we conclude that such evidence justifies a rehearing on the issue of decedent's marital status prior to Dec. 16, 1953.

Estate of Mitchell Robert Quaempts (Kuneki), 6 IBIA 10 (Jan. 27, 1977)

A petition for rehearing which is based upon newly discovered evidence will be denied where it is not supported by justifiable reasons for failure to discover and present that evidence, rendered as new, at the hearing held prior to the issuance of the decision.

A petition for rehearing which is based upon newly discovered evidence will be denied where it is not accompanied by affidavits of witnesses stating fully what the new testimony is to be.

Estate of Adeline Andrews White, 6 IBIA 94 (June 1, 1977)

But for certain errors committed by the Superintendent's office, appellant would have perfected a proper request for rehearing. In the interest of justice, the extenuating circumstances in this case compel a finding that appellant filed a petition for rehearing which, not having been rejected, was acceptable.

Estate of Fannie Newrobe Choate, 6 IBIA 144 (Sept. 9, 1977)

INDIAN PROBATE--Continued

REHEARING--Continued

370.1 Pleading, Timely Filing

In computing the time for filing a petition for rehearing, where the last day of the 60-day period so computed falls on a Saturday, Sunday, Federal legal holiday, or other nonbusiness day, it is not to be included.

Estate of Adeline Andrews White, 6 IBIA 94 (June 1, 1977)

REOPENING

375.0 Generally

Where no cogent reasons are alleged and the petition for reopening is submitted after the statutory period for filing, a reopening will not be allowed.

Estate of Throws First, 6 IBIA 28 (Feb. 4, 1977)
84 I.D. 253

While requests for reopening estates closed for more than 3 years face rigid requirements under Departmental regulations, exceptional cases arise in which such petitions should be granted.

Generally, three elements must be satisfied to justify reopening an estate which has been closed a long time. First, it must appear that a manifest injustice will likely prevail if the petition to reopen is denied. Second, it should be demonstrated by compelling proof that the delay in requesting relief was not occasioned by the lack of diligence on the part of the petitioning parties. Third, there should exist a possibility for correction of the error.

Estate of Peter Feather Earring Cleveland, 6 IBIA 44 (Mar. 30, 1977)

It is permissible to reopen an estate on grounds that such action will possibly lead to petitioners' enrollment in the tribe and therefore correction of a manifest injustice.

It is incumbent on the Department to redistribute interests in trust land in the course of reopening estates when such redistribution is possible as failure to do so would be in violation of the Secretary's trust responsibility to heirs of allotted land.

Estate of Tennyson B. Saupitty, 6 IBIA 140 (Sept. 2, 1977)

SECRETARY'S AUTHORITY

381.0 Generally

The Department of the Interior does not have authority to declare a Federal statute unconstitutional.

Estate of William (Konoa) Jackson, 6 IBIA 52 (May 4, 1977)

INDIAN PROBATE--Continued

STATE LAW

390.2 Applicability to Indian Probate, Testate

The Secretary of the Interior is not bound by State law in passing on the validity of wills of Indians disposing of trust property except where otherwise provided by Congress.

Estate of Hank Cluette, 6 IBIA 47 (Apr. 1, 1977)

WILLS (See also INHERITING, FELON.)

425.5 Approval of Will

Where the scrivener was not in the reasonable vicinity of the place of hearing, departmental procedures do not require that he be produced in a will contest where testamentary capacity is proved by other evidence.

Estate of Hank Cluette, 6 IBIA 47 (Apr. 1, 1977)

425.27.0 State Law

425.27.2 Applicability to Indian Probate, Testate

A power of appointment is a power of disposition given to a person or persons over property not their own, by someone who directs the mode in which that power shall be exercised by a particular instrument. It is an authorization to do an act which the owner granting the power might himself by law fully perform.

A power of appointment included in a purported Indian will concerning trust allotments or restricted personal property is not valid unless first approved by the Secretary of the Interior or his duly appointed subordinate.

Estate of Daniel J. Pierre, 6 IBIA 17 (Jan. 28, 1977) 84 I.D. 68

425.28 Testamentary Capacity

425.28.0 Generally

Testator's reference to unrelated sole devisee as his "nephew" in his last will and testament is possible evidence bearing on the mental capacity of testator, but such reference is not in itself dispositive of the issue of alleged testamentary incapacity. From a consideration of all the evidence, we hold that testator's reference to devisee as his "nephew" in his will does not show that decedent was unable to recognize the natural objects of his bounty or that he was otherwise in an irrational state when the will was executed.

Estate of Hank Cluette, 6 IBIA 47 (Apr. 1, 1977)

INDIAN PROBATE--Continued

WILLS (See also INHERITING, FELON.)--Continued

425.28 Testamentary Capacity--Continued

425.28.0 Generally--Continued

A judge's findings regarding testamentary capacity will not be set aside where supported by evidence adduced at a probate hearing on the will.

Estate of Felix Walking, a/k/a Philip Walking, 6 IBIA 153 (Oct. 12, 1977)

YAKIMA TRIBES

435.0 Generally

A statutory option held by the Tribe to take such interests in lands which pass to specific heirs or devisees who are not enrolled members of the Tribe does not vest any rights in said interests until payment by the Tribe of the fair-market value as determined by the Administrative Law Judge, after hearing if demanded, plus unpaid interest.

Fair-market value date is considered to be the date of hearing to determine value or if no hearing, the date the Judge makes an independent finding and judgment as to the fair-market value of the interest to be taken.

Estate of Edward Lewis Pitt, 6 IBIA 156 (Oct. 17, 1977) 84 I.D. 854

INDIAN TRIBES
(See also Indian Probate.)

HUNTING AND FISHING

On Reservation

18 U.S.C. § 1165 (1970) confirms the right of Indian Tribes to control, regulate and license hunting and fishing within their reservations.

Opinion on the Boundaries of and Status of Title to Certain Lands Within the Colville and Spokane Indian Reservations, M-36887 (Feb. 2, 1977) 84 I.D. 72

JURISDICTION

18 U.S.C. § 1165 (1970) confirms the right of Indian Tribes to control, regulate and license hunting and fishing within their reservations.

Opinion on the Boundaries of and Status of Title to Certain Lands Within the Colville and Spokane Indian Reservations, M-36887 (Feb. 2, 1977) 84 I.D. 72

INDIAN WATER AND POWER RESOURCES

IRRIGATION PROJECTS

A recreation and public purposes application must be rejected for lands temporarily withdrawn for an irrigation project to benefit Indians. Such a withdrawal is effective until specifically revoked, even though it is made on a temporary basis and has been in effect for more than 50 years.

Elko County Board of County Supervisors, 29 IBLA 220 (Mar. 23, 1977)

INDIANS

GENERALLY

A recreation and public purposes application must be rejected for lands temporarily withdrawn for an irrigation project to benefit Indians. Such a withdrawal is effective until specifically revoked, even though it is made on a temporary basis and has been in effect for more than 50 years.

Elko County Board of County Supervisors, 29 IBLA 220 (Mar. 23, 1977)

LIEU SELECTIONS

Under 43 U.S.C. § 852(a)(1) (1970), as amended by sec. 25 of the Geothermal Steam Act of 1970, 30 U.S.C. § 1024 (1970), a State may select lands with geothermal potential as indemnity for base lands lost by it from its grant for common schools without a reservation to the United States of the geothermal rights therein, provided that these base lands also have geothermal potential.

Per sec. 25 of the Geothermal Steam Act of 1970, geothermal resources are treated under 43 U.S.C. § 852(a) (1970) as other leasable minerals, rather than as oil and gas, so that a State need not submit as base for indemnity selection of lands which have been classified by the Geological Survey as being within a "KGRA" (known geothermal resource area) lands which also are classified as KGRA, but instead need only submit base lands classified by GS as having geothermal potential.

Where BLM has issued a clear list giving a State title to lands selected as indemnity for lost school lands but erroneously reserving to the United States geothermal rights to these selected lands, these geothermal rights are still within the power of the United States to dispose of, and the Department still exercises jurisdiction over them, so that the Board of Land Appeals may correct BLM's error by ordering that these rights be given to the State by deleting the reservation thereof in the clear list.

Where the record indicates that there may be gross disparity between the value of lands selected by a State as indemnity for lost school lands and the value of base lands submitted by the State in support of the selection, the matter will be remanded to the BLM for revaluation of the lands. If the revaluation reveals

LIEU SELECTIONS--Continued

a gross disparity, the BLM shall withhold further action until judicial resolution of the propriety of the "grossly disparate value" policy.

State of California, 33 IBLA 160 (Dec. 20, 1977)

MATERIALS ACT

The Bureau of Land Management, under 43 CFR 5442.3, has the authority to reject bids submitted for timber sales where it rationally determines that rejection is in the Government's interest.

Cabax Mills, 32 IBLA 225 (Sept. 20, 1977)

A party seeking a partial refund of the purchase price under the risk of loss provision of a contract for the cash sale of vegetative resources pursuant to the Materials Act of July 31, 1947, must present substantial evidence of the quantity of resources lost which otherwise would have been harvested.

Alma D. LeBaron, Jr., 32 IBLA 299 (Sept. 29, 1977)

MILLSITES
(See also Mining Claims.)

GENERALLY

Where a millsite is not being used for mining or milling purposes in connection with a mining claim owned by the owner of the millsite, and at the time of contest there is no quartz mill or reduction works on the site, the millsite must be declared null and void.

United States v. Wayne E. Highley, 30 IBLA 21 (Apr. 7, 1977)

DETERMININATION OF VALIDITY

Where millsites are not used for mining or milling purposes in conjunction with a mining claim, and where no quartz or reduction works exist on the millsites, the millsites are properly declared null and void.

United States v. Robert A. Rukke (Registered Agent), Valumines, Inc., et al., 32 IBLA 155 (Sept. 12, 1977)

MINERAL LANDS

DETERMINATION OF CHARACTER OF

Under 30 U.S.C. § 262 (1970), a valuable deposit of sodium must be leased competitively even though the Geological Survey determination that lands are so known may have been made subsequent to appellant's filing of its application.

Permian Mud Service, Inc., 31 IBLA 150 (June 30, 1977)

MINERAL LANDS--Continued

DETERMINATION OF CHARACTER OF--Continued

To establish the mineral character of railroad grant lands under the Act of July 1, 1862 (12 Stat. 489), as amended, it must be shown that known conditions--which may include geological conditions, discoveries of minerals in adjacent land and other observable external conditions upon which prudent and experienced men are known to be accustomed to act--on the critical date are such as reasonably to engender the belief that the land contains mineral of such quality and in such quantity as to render its extraction profitable and justify expenditures to that end.

When the Department of the Interior finds that public land within the place limits of a grant to a railroad under the Act of July 1, 1862, as amended, was mineral in character and the railroad company, filing for patent on behalf of an alleged bona fide purchaser from it, challenges such finding, a hearing should be granted at which the Department has the obligation of making a prima facie case of mineral character, whereupon the company has the burden of establishing nonmineral character by a preponderance of the evidence, and the bona fides of the purchaser.

Southern Pacific Transportation Co., 32 IBLA 218 (Sept. 19, 1977)

LEASES

An application for a prospecting permit cannot be suspended and is properly rejected where the lands applied for are unavailable because they are private lands awaiting transfer of title to the United States.

LeRoy Pedersen, 31 IBLA 124 (June 30, 1977)

Under 30 U.S.C. § 262 (1970), a valuable deposit of sodium must be leased competitively even though the Geological Survey determination that lands are so known may have been made subsequent to appellant's filing of its application.

Under 30 U.S.C. §§ 162 and 262 (1970), valuable deposits of sodium compounds are not open to location and disposition under the mining laws, but may be disposed of only under the Mineral Leasing Act, except for certain claims under 43 CFR 3501.1-1(b), existent at passage of Mineral Leasing Act of 1920 which have since been maintained in accordance with statute and regulation.

Permian Mud Service, Inc., 31 IBLA 150 (June 30, 1977)
84 I.D. 342

MINERAL RESERVATION

Where material involving a prior mineral reservation on acquired lands is first submitted on appeal, and the effect of a State statute and State court decree is in issue, it is appropriate to remand the case to the BLM State Office for further consideration.

A. N. Henderson, 30 IBLA 8 (Apr. 4, 1977)

MINERAL LANDS--Continued

MINERAL RESERVATION--Continued

Under 43 U.S.C. § 852(a)(1) (1970), as amended by sec. 25 of the Geothermal Steam Act of 1970, 30 U.S.C. § 1024 (1970), a State may select lands with geothermal potential as indemnity for base lands lost by it from its grant for common schools without a reservation to the United States of the geothermal rights therein, provided that these base lands also have geothermal potential.

Per sec. 25 of the Geothermal Steam Act of 1970, geothermal resources are treated under 43 U.S.C. § 852(a) (1970) as other leasable minerals, rather than as oil and gas, so that a State need not submit as base for indemnity selection of lands which have been classified by the Geological Survey as being within a "KGRA" (known geothermal resource area) lands which also are classified as KGRA, but instead need only submit base lands classified by GS as having geothermal potential.

Where BLM has issued a clear list giving a State title to lands selected as indemnity for lost school lands but erroneously reserving to the United States geothermal rights to these selected lands, these geothermal rights are still within the power of the United States to dispose of, and the Department still exercises jurisdiction over them, so that the Board of Land Appeals may correct BLM's error by ordering that these rights be given to the State by deleting the reservation thereof in the clear list.

Where the record indicates that there may be gross disparity between the value of lands selected by a State as indemnity for lost school lands and the value of base lands submitted by the State in support of the selection, the matter will be remanded to the BLM for revaluation of the lands. If the revaluation reveals a gross disparity, the BLM shall withhold further action until judicial resolution of the propriety of the "grossly disparate value" policy.

State of California, 33 IBLA 160 (Dec. 20, 1977)

PROSPECTING PERMITS

Lands which have been designated by the Act of Aug. 13, 1949, as public domain are not leasable under the Mineral Leasing Act for Acquired Lands or Reorganization Plan No. 3 of 1946, even though they may have been acquired lands prior to the Act of Aug. 13, 1949. A prospecting permit for uranium on such lands will be denied.

John R. Meadows, 30 IBLA 14 (Apr. 4, 1977)

An application for extension of a hardrock prospecting permit is properly denied where the permittee has not met the conditions imposed by the permit terms and the regulations. Where extension of a prospecting permit is conditioned upon the drilling of an adequate test well or the excavation of an adequate trench pursuant to a prospecting plan approved in advance by the Mining Supervisor, Geological Survey, the allegation on appeal of certain research regarding location of former mines, electromagnetic surveys, and similar activities will not suffice to justify an extension.

Fred G. Cansler, 30 IBLA 273 (June 1, 1977)

MINERAL LANDS--Continued

PROSPECTING PERMITS--Continued

An application for a prospecting permit cannot be suspended and is properly rejected where the lands applied for are unavailable because they are private lands awaiting transfer of title to the United States.

LeRoy Pedersen, 31 IBLA 124 (June 30, 1977)

Where the regulation allows the filing of an application for a prospecting permit on a copy of the approved form not correctly reproduced, and the application contains a statement that the applicant agrees to be bound by the term conditions on the approved form, an application which consists of a copy of only the first page of a two-page form is properly rejected when it is not accompanied by the required statement.

Where the regulations, 43 CFR 3511.2-4(a) and (b), allow an applicant for a prospecting permit to file a new application if his first was defective, but the defect is curable, the new application has priority only as of the date it is filed and does not retain the priority of the first application.

UOP, Inc., 31 IBLA 142 (June 30, 1977)

Under 30 U.S.C. $$ 162 and 262 (1970), valuable deposits of sodium compounds are not open to location and disposition under the mining laws, but may be disposed of only under the Mineral Leasing Act, except for certain claims under 43 CFR 3501.1-1(b), existent at passage of Mineral Leasing Act of 1920 which have since been maintained in accordance with statute and regulation.

Permian Mud Service, Inc., 31 IBLA 150 (June 30, 1977) 84 I.D. 342

An applicant for prospecting permits is not the "sole party in interest," within the meaning of 43 CFR 3500.0-5(a), where another party participates in the preparation and filing of the application, and where an agreement exists at the time of filing under which the applicant is bound to assign to the other party any advantages gained by him from the applications.

Where a party is not the sole party in interest in applications for prospecting permits, his applications must be rejected under 43 CFR 3511.2-4(a)(7) if they do not comply with the mandatory provisions of 43 CFR 3502.7, which require submission of statements of all parties' respective interests and of any agreement between them, and submission of evidence of the qualifications of all parties to hold prospecting permits.

Where a party files applications for prospecting permits as an attorney-in-fact of another party, he must disclose his status as an agent by designating his principal as the "applicant" on the application forms, and must, under 43 CFR 3502.3-1 and 3502.6-1(a), file statements of qualifications for both himself and his principal, as well as a copy of the agreement establishing his power of attorney, or his applications must be rejected under 43 CFR 3511.2-4(a)(7).

Willadean Patton, Essex Minerals, Inc., National Bulk Carriers, Inc., 32 IBLA 350 (Oct. 21, 1977)

MINERAL LEASING ACT

(See also Coal Leases and Permits, Geothermal Leases, Oil and Gas Leases, Phosphate Leases and Permits, Sodium Leases and Permits.)

GENERALLY

The Mineral Leasing Act of 1920, as amended and supplemented, most recently by the Coal Leasing Amendments Act of 1975, allows the Secretary to authorize development of coal leases by methods which were not utilized by the industry at the time of passage of the 1920 Act. The broad grants of authority to the Secretary in the 1920 Act allow technological developments in the coal mining industry.

In Situ Gasification of Coal, M-36890 (May 24, 1977) 84 I.D. 244

The U.S. Geological Survey is the technical expert of the Department of the Interior in matters concerning geologic evaluations. The Bureau of Land Management is entitled to rely on mineral determinations of Survey, such as qualification of a test well as a discovery well defined by a unit agreement, in the absence of a clear and definite showing of error.

Corrine Grace, 30 IBLA 296 (June 1, 1977)

Oil and gas leases of Indian lands entered into under the 1938 Mineral Leasing Act (25 U.S.C. $$ 396a-396f (1970)) are not subject to the taxation proviso contained in 25 U.S.C. $ 398 (1970). The 1924 Act's (25 U.S.C. $ 398) taxation proviso applies to leases entered into under the 1891 Mineral Leasing Act (25 U.S.C. $ 397 (1970)).

Fort Peck tribal lands are not "bought and paid for" under 25 U.S.C. $ 397 (1970).

Tax Status of the Production of Oil and Gas from Leases of Fort Peck Tribal Lands under the 1938 Mineral Leasing Act, M-36896 (Nov. 7, 1977) 84 I.D. 905

APPLICABILITY

A silicate will be considered to be a sodium silicate and subject to disposal under the Mineral Leasing Act either where the sodium within the deposit is commercially valuable or where the sodium is essential to the existence of the mineral.

United States v. Union Carbide Corp., 31 IBLA 72 (June 24, 1977) 84 I.D. 309

Under 30 U.S.C. $$ 162 and 262 (1970), valuable deposits of sodium compounds are not open to location and disposition under the mining laws, but may be disposed of only under the Mineral Leasing Act, except for certain claims under 43 CFR 3501.1-1(b), existent at passage of Mineral Leasing Act of 1920 which have since been maintained in accordance with statute and regulation.

Permian Mud Service, Inc., 31 IBLA 150 (June 30, 1977) 84 I.D. 342

MINERAL LEASING ACT--Continued

LANDS SUBJECT TO

Under 30 U.S.C. §§ 162 and 262 (1970), valuable deposits of sodium compounds are not open to location and disposition under the mining laws, but may be disposed of only under the Mineral Leasing Act, except for certain claims under 43 CFR 3501.1-1(b), existent at passage of Mineral Leasing Act of 1920 which have since been maintained in accordance with statute and regulation.

Permian Mud Service, Inc., 31 IBLA 150 (June 30, 1977)
84 I.D. 342

METHODS OF DEVELOPMENT

The Mineral Leasing Act of 1920, as amended and supplemented, most recently by the Coal Leasing Amendments Act of 1975, allows the Secretary to authorize development of coal leases by methods which were not utilized by the industry at the time of passage of the 1920 Act. The broad grants of authority to the Secretary in the 1920 Act allow technological developments in the coal mining industry.

In Situ Gasification of Coal, M-36890 (May 24, 1977)
84 I.D. 244

MINERAL LEASING ACT FOR ACQUIRED LANDS

GENERALLY

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest, filed before Sept. 30, 1976, must have been accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which was defective for failure to comply with this mandatory regulation must be rejected where it was filed in the simultaneous drawing procedure.

Duncan Miller, 29 IBLA 1 (Feb. 7, 1977)

Mary Nan Spear, 31 IBLA 386 (Aug. 16, 1977)

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. When an offeror submits, on appeal, a copy of such statement but the date on the statement differs from the date on the card, and the offeror does not allege he filed the statement simultaneously with the offer, such offer must be rejected for failure to comply with a mandatory regulation.

Duncan Miller, 29 IBLA 43 (Feb. 16, 1977)

MINERAL LEASING ACT FOR ACQUIRED LANDS--Continued

GENERALLY--Continued

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest, filed before Oct. 28, 1976, must have been accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which was defective for failure to comply with this mandatory regulation must be rejected where it was filed in the simultaneous drawing procedure.

Vernon C. Howell, 30 IBLA 70 (Apr. 18, 1977)

Where noncompetitive acquired lands oil and gas lease offers were allegedly deposited on the cashier's counter in the proper Bureau of Land Management office prior to close of business on a certain day, yet were not discovered by a Bureau employee until 6 a.m. the following day and date-time stamped as filed at 10 a.m. on such day, a protest and petition to amend the filing date of such offers are properly denied where the offeror produces no evidence to support her claim other than her personal affidavit; where no Bureau employee saw the offeror in the Bureau office at the time she claimed to have been there; where no Bureau employee saw the offers on the counter until the following day; and where third-party rights are involved.

Laura J. Spangler, 30 IBLA 265 (May 31, 1977)

CONSENT OF AGENCY

Under the Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1970), if the lands embraced within an oil and gas lease application are under surface jurisdiction of a service or bureau within the Department of the Interior, as are the National Park Service and the Bureau of Reclamation, the consent of the Secretary of the Interior is necessary under the Act to the leasing of the land. Where the National Park Service recommends that oil and gas leases for lands within the boundaries of the Chickasaw National Recreation Area be rejected in order to maintain the area for the purposes for which it was established, it is proper to accept this recommendation and reject the offers.

Daphfine Shear, David L. Shear, 29 IBLA 33 (Feb. 10, 1977)

Where acquired lands are under the jurisdiction of a bureau of the Department of the Interior, the Secretary is the one whose consent is necessary to the leasing of the land. The Bureau's views, of course, will be considered carefully. Where its views are merely conclusionary, it is proper to remand the case to ascertain the factual basis of such conclusions and whether leasing would be permissible if coupled with appropriate stipulations. The Bureau of Reclamation is not an "agency" within the ambit of that term in the Acquired Lands Mineral Leasing Act. 30 U.S.C. §§ 351-59 (1970).

The Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. §§ 351-59 (1970), requires that the consent of the administrative agency having jurisdiction of the acquired land described in a lease offer be obtained prior to the issuance of an oil and gas lease for such

MINERAL LEASING ACT FOR ACQUIRED LANDS--Continued

CONSENT OF AGENCY--Continued

land. The Department of the Interior has no authority to lease such land where the consent is withheld.

Walter W. Sapp, 29 IBLA 319 (Mar. 30, 1977)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1970), requires that the consent of the administrative agency having jurisdiction of the acquired land described in a lease offer be obtained prior to the issuance of an oil and gas lease for such land. The Department of the Interior has no discretionary authority to lease such land where the consent is withheld.

Charles F. Hajek and Frederick L. Smith, 29 IBLA 330 (Mar. 31, 1977)

The Bureau of Reclamation is not an "agency" within the ambit of that term in the Acquired Lands Mineral Leasing Act, 30 U.S.C. §§ 351-59 (1970). Where acquired lands are under the jurisdiction of a Bureau of the Department of the Interior, it is the Secretary's consent which is necessary to the leasing of land, and while the Bureau's views will be given careful consideration, where such views are merely conclusionary, it is proper to remand the case to ascertain the factual basis for such conclusions and to determine whether leasing may be permissible if coupled with appropriate stipulations.

Shell Oil Co., 30 IBLA 187 (May 19, 1977)

The Bureau of Reclamation is not an "agency" within the ambit of that term in the Acquired Lands Mineral Leasing Act. 30 U.S.C. §§ 351-59 (1970). Where acquired lands are under the jurisdiction of a Bureau of the Department of the Interior, it is the Secretary's consent which is necessary to the leasing of the land. The Bureau's views will be considered carefully. However, where its views are essentially conclusory, it is proper to remand the cases to ascertain the detailed factual basis of such conclusions and whether leasing would be permissible if coupled with appropriate stipulations.

Kent E. Peterson, 30 IBLA 199 (May 20, 1977)

A recommendation by the Bureau of Reclamation that issuing oil and gas leases on acquired land under its administration would jeopardize further acquisitions, should be given careful consideration, but the Bureau of Land Management must independently evaluate whether issuing the leases would be in the public interest.

An independent evaluation of whether the issuance of oil and gas leases on acquired lands would be in the public interest need, in some cases, consist only of an examination of the general character of the land. Where, however, the offeror raises material factual questions, these must be considered.

Harris R. Fender, 33 IBLA 216 (Dec. 22, 1977)

MINERAL LEASING ACT FOR ACQUIRED LANDS--Continued

LANDS SUBJECT TO

An oil and gas lease offer made pursuant to the Mineral Leasing Act for Acquired Lands is properly rejected where the subject lands are not acquired lands but, rather, are patented with a reservation of mineral rights in the United States.

John O. Clay, 28 IBLA 353 (Jan. 24, 1977)

MINERALS EXPLORATION

Where the declared administrative policy is to refuse permission for geophysical exploration on lands controlled by sec. 17(d)(1) of the Alaska Native Claims Settlement Act and the subject lands are under consideration for possible inclusion in the national forest system, a decision refusing such permission will be affirmed.

Shell Oil Co., 28 IBLA 378 (Feb. 4, 1977)

MINING CLAIMS
(See also Multiple Mineral Development Act and Surface Resources Act.)

GENERALLY

A petition for deferment of assessment work may only be granted pursuant to 43 CFR 3852.1, where "legal impediments" exist which affect the right of a mining claimant to enter upon the surface of a claim or group of claims. That there has been no administrative determination of the validity of the claims, possible trespass actions are threatened, and there is a Federal court suit pending concerning the claims, do not constitute "legal impediments" within the ambit of the Act of June 21, 1949, 30 U.S.C. § 28b-e (1970), and a petition for deferment of assessment work will be denied.

Portland General Electric Co., L. C. Curtright, 29 IBLA 165 (Mar. 9, 1977)

The notation on public records of the Bureau of Land Management of a request for withdrawal has a segregative effect on land included in a mining location, so that in a contest proceeding, the claimants must show that they had made a discovery of a valuable mineral deposit before the time of posting of the withdrawal application.

United States v. John L. Maley and James F. Pagel, 29 IBLA 201 (Mar. 22, 1977)

In determining whether a deposit of clay is locatable as a valuable mineral deposit under the mining laws, there is a distinction between a deposit considered to be a common or ordinary clay, which is not locatable, and a locatable deposit having exceptional qualities useful and marketable for purposes for which common clays cannot be used.

"Common Clay." A "common clay" not locatable under the mining laws does not include clay having exceptional qualities which meets refractory and other quality standards for highgrade ceramic products or other products

MINING CLAIMS--Continued

GENERALLY--Continued

requiring a high refractoriness, or which is useful for certain industrial uses, such as in the oil and oil well drilling industries, outside the manufacture of general clay products. It does include, however, clay usable or used only for structural and other heavy clay products, for pressed or face brick, as well as ordinary brick, and for pottery and ordinary earthenware and stoneware. The fact industrial and technological changes may make a certain clay deposit valuable for a given major manufacturer of brick, tile and other clay products, because it meets its peculiar specifications for blends with other raw materials, does not warrant a change from Departmental precedents and a strong Congressional policy establishing that clay usable only for such purposes is a common clay not locatable under the mining laws.

United States v. Thomas J. Peck, et al., 29 IBLA 357 (Mar. 31, 1977) 84 I.D. 137

Where a mining claim is located on lands at a time when the official records of the Bureau of Land Management showed such lands to be subject to a proposed withdrawal from operation of the mining laws, that mining claim is null and void ab initio.

Jack D. Canon, et al., 30 IBLA 112 (May 2, 1977)

A mining claim located after Oct. 21, 1976, for which a notice of recordation required to be filed by sec. 314(b) of the Federal Land Policy and Management Act of 1976, has not been filed within 90 days from the date of location is void, and the Department may not accept or give force to a notice of recordation filed after the 90-day period.

Effect of Failure to Record Timely Under Sec. 314(b), Federal Land Policy and Management Act of 1976, M-36889 (May 17, 1977) 84 I.D. 188

The Bureau of Land Management, in exercise of its authority to regulate the acquisition of rights in the public lands, may contest any unpatented mining claim located on public land under its jurisdiction to determine, among other things, if the claimant has discovered on his mining claim a valuable mineral deposit as required by 30 U.S.C. § 22 (1970).

United States v. Gwendolyn McClurg, et al., 31 IBLA 8 (June 15, 1977)

Government witnesses in a contest proceeding who are qualified by education and experience are competent to testify as experts with reference to the prudent man rule.

United States v. A. O. Bartell, 31 IBLA 47 (June 23, 1977)

MINING CLAIMS--Continued

GENERALLY--Continued

A petition for deferment of annual assessment work will not be granted where a claimant alleges only that the claims in question are the subject of litigation and that it would be unwise to engage in any development until a resolution of that litigation is reached.

Charlestone Stone Products, Inc., 32 IBLA 22 (Aug. 30, 1977)

A locator of a mining claim on public land has taken only the initial step in seeking to secure a gratuity from the Government and obtains no rights against the United States until there has been a discovery of a valuable mineral deposit within the limits of the claim.

United States v. R. E. Rodgers and Barbara J. Rodgers, 32 IBLA 77 (Sept. 2, 1977)

Land is segregated from entry under the mining laws when a proposed withdrawal of the lands from mineral entry is noted on the official records of the Bureau of Land Management and a mining claim located after that time is null and void ab initio.

The segregative effect of an application by a Federal agency for withdrawal of land from mineral entry is not affected by the provision in the published proposal that further hearings and investigations may be held.

The authority of the Government to proceed with the withdrawal of public lands, after a Federal agency has filed an application for such action, which withdraws that land from mineral location, will not be barred by laches because of lapse of time.

William J. Smith, Sr., et al., 33 IBLA 47 (Nov. 25, 1977)

The Bureau of Land Management may require maps of mining claims meeting the requirements of 43 CFR 3833.1-2(c)(7) before accepting the recordation of the claims under 43 U.S.C.A. § 1744 (West Supp. 1977).

Paul S. Coupey, 33 IBLA 178 (Dec. 20, 1977)

Where a corporation allegedly acquired a group of unpatented mining claims, but the instruments of conveyance and the abstract of title are subject to various objections by the Government's title examiner, which the corporation finds are difficult or impossible to cure, the corporation nonetheless may receive a patent to the claims pursuant to the Act of July 9, 1870 (R.S. § 2332; 30 U.S.C. § 38 (1970)), by demonstrating its qualifications under that Act.

Alaska Placer Co., 33 IBLA 187 (Dec. 21, 1977) 84 I.D. 990

MINING CLAIMS--Continued

GENERALLY--Continued

A mining claim located after Oct. 21, 1976, for which a notice of recordation required to be filed by sec. 314(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744) has not been filed within 90 days from the date of location is void, and no force and effect can be given to a notice of recordation filed after the 90-day period.

Southwestern Exploration Associates, 33 IBLA 240 (Dec. 28, 1977)

ASSAYS

The rule of evidence excluding hearsay is not strictly adhered to in administrative proceedings, particularly where the evidence, such as assay reports with a proper foundation concerning the sampling, submission of the samples for assaying, and the reputation of the assayer, is competent and relevant. After such reports are admitted, the factfinder may give them appropriate weight according to the circumstances surrounding the specific report.

United States v. Robert A. Rukke (Registered Agent), Valumines, Inc., et al., 32 IBLA 155 (Sept. 12, 1977)

ASSESSMENT WORK

A petition for deferment of assessment work may only be granted pursuant to 43 CFR 3852.1, where "legal impediments" exist which affect the right of a mining claimant to enter upon the surface of a claim or group of claims. That there has been no administrative determination of the validity of the claims, possible trespass actions are threatened, and there is a Federal court suit pending concerning the claims, do not constitute "legal impediments" within the ambit of the Act of June 21, 1949, 30 U.S.C. § 28b-e (1970), and a petition for deferment of assessment work will be denied.

Portland General Electric Co., L. C. Curtright, 29 IBLA 165 (Mar. 9, 1977)

A petition for deferment of annual assessment work will not be granted where a claimant alleges only that the claims in question are the subject of litigation and that it would be unwise to engage in any development until a resolution of that litigation is reached.

Charlestone Stone Products, Inc., 32 IBLA 22 (Aug. 30, 1977)

COMMON VARIETIES OF MINERALS

Generally

With respect to materials as common as sand and gravel, a mining claimant must show that by reason of accessibility, bona fides in development, proximity to market, existence of present demand, and other factors, the deposit is of such value that it can be mined, removed and disposed of at a profit, and since common varieties were declared no longer locatable by the Act of July 23,

MINING CLAIMS--Continued

COMMON VARIETIES OF MINERALS--Continued

Generally--Continued

1955, 30 U.S.C. § 611 (1970), that a reasonably continuous market has existed from enactment of the statute.

United States v. Lloyd O'Callaghan, Sr., et al., 29 IBLA 333 (Mar. 31, 1977)

Mining claims located for deposits of common varieties of building stone, sand and gravel, if located prior to the Act of July 23, 1955, must be held to be invalid where it is not shown that these materials could have been profitably marketed prior to that date.

United States v. Frank and Wanita Melluzzo (Supp. on Judicial Remand), 32 IBLA 46 (Sept. 2, 1977)

CONTESTS

Under the Department of the Interior's rules governing contests against mining claims, where an answer to a complaint is not filed within the prescribed time the allegations of the complaint will be taken as admitted by the contestee and the case decided without a hearing by the appropriate officer of the Bureau of Land Management. A mining claim may be declared null and void where there was a charge in the complaint of insufficient minerals to constitute a valid discovery.

United States v. William C. Smith, a/k/a Bill Smith, 29 IBLA 7 (Feb. 8, 1977)

Under the Department of the Interior's rules governing contests against mining claims, where an answer to a complaint is not filed within the prescribed time the allegations of the complaint will be taken as admitted by the contestee and the case decided without a hearing by the appropriate officer of the Bureau of Land Management. However, under the rules an answer may be accepted if it is received within 10 days after the due date and it is determined that the answer was probably transmitted before the end of the period in which it was required to be filed.

United States v. Jesse Smith, 29 IBLA 10 (Feb. 8, 1977)

Where the answer to a mining contest complaint denying the charges is not timely filed, the charges will be deemed admitted and the contest will be decided without a hearing. 43 CFR 4.450-7(a).

United States v. Edison T. Schaefer, 29 IBLA 84 (Feb. 23, 1977)

When the Government has presented a prima facie case of lack of discovery of a valuable mineral deposit on a mining claim, the mining claimant then has the burden of establishing by a preponderance of the evidence that the discovery test has been met. Consequently,

MINING CLAIMS--Continued

CONTESTS--Continued

the ultimate burden of proving discovery is always upon the mining claimant.

United States v. George J. Hunt and A. M. Goodwin, 29 IBLA 86 (Feb. 23, 1977)

When a mining claimant has failed to answer a complaint in a mining contest, the allegations are deemed admitted and the State Office of the Bureau of Land Management will decide the case without a hearing. 43 CFR 4.450-7(a).

A defaulting contestee may not rely on an answer filed by another contestee in the same contest when such answer never purported to be on behalf of the defaulting contestee.

United States v. Frederick A. Hagg, et al., 29 IBLA 128 (Feb. 23, 1977)

Under the mining law discovery of a valuable mineral deposit is the sine qua non for a valid mining claim. State mining laws relating to discovery may only add to the Federal mining law; such laws cannot diminish the Federal requirements for discovery of a valuable mineral deposit on a mining claim located on Federal lands.

United States v. Bradley F. Denham, 29 IBLA 185 (Mar. 18, 1977)

A mining claim is properly declared null and void where the Government establishes a prima facie case of lack of discovery, and the contestee does not show by a preponderance of the evidence that a discovery has been made.

United States v. Chester L. Ramsey, 29 IBLA 243 (Mar. 25, 1977)

United States v. Wayne E. Highley, 30 IBLA 21 (Apr. 7, 1977)

Once the Government has established in a mining claim contest a prima facie case that the claims are not valid for lack of discovery, the burden shifts to the contestee to prove the discovery of a valuable mineral deposit by a preponderance of the evidence.

United States v. Howard S. McKenzie, 29 IBLA 270 (Mar. 28, 1977)

The ultimate burden of proof to show a discovery of a valuable mineral deposit is always upon the mining claimant, but if the Government in a contest fails to present a prima facie case and the contestee moves to dismiss the case and rests, the contest complaint must be dismissed because there would be no evidentiary basis for an order of invalidity.

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be

MINING CLAIMS--Continued

CONTESTS--Continued

considered; therefore, if evidence presented by contestee shows there has not been a discovery, it may be used in reaching a decision that the claim is invalid regardless of any defects in the prima facie case.

Where the Government has made a prima facie case of lack of discovery in a mining contest, and a mining claimant fails to show discovery by a preponderance of the evidence, he has not satisfied his burden of proof and the claim must be declared invalid.

United States v. Lloyd O'Callaghan, Sr., et al., 29 IBLA 333 (Mar. 31, 1977)

In a Government contest challenging the validity of mining claims located for a clay-type material, an adequate prima facie case is established where there are expert witness opinions that the deposit is only a common clay or shale and it cannot meet refractory standards. The contestees then must go forward with evidence to rebut the Government's case with a preponderance of the evidence.

United States v. Thomas J. Peck, et al., 29 IBLA 357 (Mar. 31, 1977) 84 I.D. 137

When the Government contests a mining claim on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; then the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

United States v. Fred and Eileen Garner, 30 IBLA 42 (Apr. 18, 1977)

United States v. Richard B. Walls, 30 IBLA 333 (June 7, 1977)

A mining claimant must prove a discovery under the prudent man test, including that the mineral can be extracted, removed and marketed at a profit.

In a contest of a patent application for a lode mining claim, the Board of Land Appeals may remand the case for further hearing to complete the record regarding the (1) availability and expense of necessary financing, land and water, (2) the expense of labor, and (3) the expense of compliance with environmental protection laws.

United States v. Pittsburgh Pacific Co., 30 IBLA 388 (June 15, 1977) 84 I.D. 282

The Bureau of Land Management, in exercise of its authority to regulate the acquisition of rights in the public lands, may contest any unpatented mining claim located on public land under its jurisdiction to determine, among other things, if the claimant has discovered on his mining claim a valuable mineral deposit as required by 30 U.S.C. § 22 (1970).

Although the Government has assumed the burden of proof in mining claim contests of presenting a prima facie

MINING CLAIMS--Continued

CONTESTS--Continued

case of lack of discovery, once it has done so, the burden shifts to the claimant to prove by a preponderance of the evidence the discovery of a valuable mineral deposit. A prima facie case is established when a Government mineral examiner testifies that she examined the claim and could find no evidence showing the discovery of a valuable mineral deposit.

United States v. Gwendolyn McClurg, et al., 31 IBLA 8 (June 15, 1977)

Where the Government contests a mining claim, it has assumed only the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that his claim is valid. Where a Government mineral examiner testifies that he extensively examined the claims and workings thereon, and had assayed numerous samples taken from the claims but found no evidence of a valuable mineral deposit that would support a discovery, a prima facie case of lack of a mineral discovery has been made.

United States v. A. O. Bartell, 31 IBLA 47 (June 23, 1977)

In making a prima facie case of lack of discovery of a valuable mineral deposit, the Government has no duty to do the discovery work for the mining claimant. It is incumbent upon the claimant to keep his discovery points available for inspection. A prima facie case is established when a Government mineral examiner gives his expert opinion that he examined the claim and found insufficient values to support a finding of discovery.

Since a Government contest is not insufficient and subject to dismissal for failure to name all parties in interest, a contest is properly brought against persons who are heirs of a director of a corporation whose charter has expired under State law, even though the State law provides that the property of such a corporation passes to a public trustee for distribution by him. Any interest of those not named or served in a manner provided by the pertinent regulation is not affected.

United States v. Emma Elizabeth Conner, and Walter T. Nolte, as the Heirs of R. W. Speer, a Last Known Director of the Arlington Gold Mining Co. (Contestee), 31 IBLA 173 (July 5, 1977)

Past evidence of successful mining activity has limited probative value in determining whether there is a present discovery of a valuable mineral deposit on a mining claim, and assay reports can be given little weight when they are not supported by evidence as to who took the sample assayed, where it was taken, and what procedures were followed in taking the sample.

United States v. Lee Nicholson, et al., 31 IBLA 224 (July 7, 1977)

MINING CLAIMS--Continued

CONTESTS--Continued

Where, pursuant to 43 U.S.C. § 315g (1970), a State has acquired land subject to a reservation of minerals to the United States, and the State thereafter leases the surface of the land to a corporation for purposes which are plainly incompatible with mining, the surface lessee has standing to initiate a private contest to determine the validity of unpatented mining claims located on the land. It is not essential to the cause of action that there be an actual physical interference by one party with the other party's use of the land if their respective interests are clearly and potentially conflicting.

Continental Oil Co. v. Aztec Exploration and Development Co., 32 IBLA 1 (Aug. 24, 1977)

When the Government contests a mining claim on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

United States v. Leslie Harling and William Harling, 32 IBLA 29 (Aug. 31, 1977)

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when such minerals were no longer subject to such location, the Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on each claim.

Where the expert witnesses called by the Government testify that prior to July 23, 1955, there was no profitable market for common variety minerals from the subject claims and that it would have been economic folly to undertake the development a mine thereon, a prima facie case of invalidity has been made. Thereafter, upon the failure of the claimant to prove the contrary by a preponderance of credible evidence, a determination that the claims are invalid is obligatory.

Where, in a contest to determine the validity of certain mining claims located for common building stone, sand and gravel, the Government charges that the claims were not located prior to the Act of July 23, 1955, which prohibited the subsequent location of such minerals, the finding by the Hearing Examiner and two administrative appellate tribunals that the charge is true and the claims were not timely located requires a holding that the claims are null and void, where such finding is supported by a preponderance of credible evidence.

United States v. Frank and Wanita Melluzzo (Supp. on Judicial Remand), 32 IBLA 46 (Sept. 2, 1977)

MINING CLAIMS--Continued

CONTESTS--Continued

In a mining claim contest where a contestee is of the opinion that the Government did not make a prima facie case of no discovery, he may move to have the case dismissed at the conclusion of the Government's case, and then rest. The contest complaint could be dismissed if the Administrative Law Judge rules that no prima facie case had been made of lack of discovery and there is no other evidence in the record to support the charges in the complaint. But if the contestee goes forward after making such a motion to dismiss and presents his evidence, that evidence must be considered as part of the entire record and its probative value will be weighed. Thus, even if the Government has failed to make a prima facie case, evidence presented by the contestee which supports the Government's contest charges may be used against the contestee, regardless of the defects in the Government's case.

Where a mining claim occupies land which has subsequently been withdrawn from the operation of the mining law, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit thereafter increased due to a change in the market.

In a proceeding to determine the validity of an unpatented mining claim the claimants must prevail, if at all, upon the strength of their own case, rather than upon any weakness in that of the Government.

Where mining claims occupy land which has subsequently been withdrawn from the operation of the mining laws by a notice of proposed classification, 43 CFR 2461.2, the validity of the claim must be tested as of the date of the published notice, as well as of the date of determination. If the claim was not supported by such a discovery at the date of the published notice of classification, the land within the claim located in the classified area would not be excepted from the effect of the withdrawal.

The "marketability rule" requiring a demonstration of present marketability at a profit is (and always has been) applicable to all mining claims, whether for base metals or for precious minerals.

United States v. R. E. Rodgers and Barbara J. Rodgers, 32 IBLA 77 (Sept. 2, 1977)

In mining claim contests, the United States has assumed the burden of establishing a prima facie case that no discovery has been made on the mining claims by the contestee; the burden of proof then shifts to the contestee to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of each mining claim. Evidence which may justify further exploration is insufficient either to establish a discovery or to overcome a prima facie case of lack of discovery.

United States v. Robert A. Rukke (Registered Agent), Valumines, Inc., et al., 32 IBLA 155 (Sept. 12, 1977)

MINING CLAIMS--Continued

CONTESTS--Continued

When the Government contests a mining claim on a charge of no discovery, it has by practice assumed the burden of going forward with sufficient evidence to establish a prima facie case; when it has done so, the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

When a contestee fails to answer a complaint, the allegations are deemed admitted and the case may be dismissed with prejudice as to that contestee. In addition, in a Government contest, the complaint is not deemed to be insufficient or subject to dismissal where the Government fails to name all interested parties, or for failure to serve every party who has been named.

United States (Contestant) v. Earl Frisco and Sandra S. Young (Contestees), 32 IBLA 248 (Sept. 21, 1977)

When the Government contests a mining claim, it bears only the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and is present within the limits of the claim.

Where a Government mineral examiner testifies that he has examined a mining claim and found the mineral values insufficient to support a finding of discovery, a prima facie case has been established.

United States v. John C. Morton, et al., 32 IBLA 263 (Sept. 27, 1977)

The Secretary of the Interior has the authority to determine the validity of mining claims on any public lands of the United States, including lands within the National Forest System, after adequate notice and opportunity for hearing. A mining claim contest initiated under the authority of the Secretary of the Interior may be prosecuted by counsel employed by the Department of Agriculture acting on behalf of the Forest Service where such action is in accordance with a Memorandum of Understanding between the agencies.

It is not necessary for the Government to prepare an environmental impact statement before issuing a complaint in a mining claim contest, as the determination of the validity of a mining claim is not a "major Federal action" within the ambit of sec. 102 of the National Environmental Policy Act of 1969, 42 U.S.C. § 4332 (1970).

United States v. Ernest F. Diven and Richard J. T. Anderson, 32 IBLA 361 (Oct. 25, 1977)

A Bureau of Land Management decision, dismissing an answer to contest complaints filed in behalf of individual contestees and a company, and holding mining claims null and void because it appeared the company did not own the claims and because the answer was filed in behalf of the individual contestees by someone not authorized to practice in their behalf, will be vacated where on appeal it is shown that within the time for filing the answer the claims had been transferred to the company. There is no need to dismiss the contest

MINING CLAIMS--Continued

CONTESTS--Continued

and initiate a new contest against the company since a timely answer has been filed in its behalf; instead, the complaints should be amended to substitute the company as the contestee and party in interest and the contest proceeding should go forward against it.

Sharon K. Milazzo, et al., 33 IBLA 57 (Dec. 5, 1977)

When the Government contests a mining claim on a charge of no discovery, it has by practice assumed the burden of going forward with sufficient evidence to establish a prima facie case; when it has done so, the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

United States v. Beatrice Ann Johnson, 33 IBLA 121 (Dec. 19, 1977)

DETERMINATION OF VALIDITY

Under the mining law discovery of a valuable mineral deposit is the sine qua non for a valid mining claim. State mining laws relating to discovery may only add to the Federal mining law; such laws cannot diminish the Federal requirements for discovery of a valuable mineral deposit on a mining claim located on Federal lands.

In determining whether there has been a discovery of a valuable mineral deposit under the mining laws on a lode mining claim factors such as the extent of the mineral deposits, the number of samples assayed showing only a trace of mineral, and the nature of the samples yielding the high values must be considered.

United States v. Bradley F. Denham, 29 IBLA 185 (Mar. 18, 1977)

A mining claim is properly declared null and void where the Government establishes a prima facie case of lack of discovery, and the contestee does not show by a preponderance of the evidence that a discovery has been made.

United States v. Chester L. Ramsey, 29 IBLA 243 (Mar. 25, 1977)

United States v. Wayne E. Highley, 30 IBLA 21 (Apr. 7, 1977)

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine.

With respect to materials as common as sand and gravel, a mining claimant must show that by reason of accessibility, bona fides in development, proximity to market, existence of present demand, and other factors, the deposit is of such value that it can be mined, removed and disposed of at a profit, and since common varieties were declared no longer locatable by the Act of July 23,

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

1955, 30 U.S.C. § 611 (1970), that a reasonably continuous market has existed from enactment of the statute.

United States v. Lloyd O'Callaghan, Sr., et al., 29 IBLA 333 (Mar. 31, 1977)

A mining claim located after Oct. 21, 1976, for which a notice of recordation required to be filed by sec. 314(b) of the Federal Land Policy and Management Act of 1976, has not been filed within 90 days from the date of location is void, and the Department may not accept or give force to a notice of recordation filed after the 90-day period.

Effect of Failure to Record Timely Under Sec. 314(b), Federal Land Policy and Management Act of 1976, M-36889 (May 17, 1977) 84 I.D. 188

A mining claimant must prove a discovery under the prudent man test, including that the mineral can be extracted, removed and marketed at a profit.

In a contest of a patent application for a lode mining claim, the Board of Land Appeals may remand the case for further hearing to complete the record regarding the (1) availability and expense of necessary financing, land and water, (2) the expense of labor, and (3) the expense of compliance with environmental protection laws.

United States v. Pittsburgh Pacific Co., 30 IBLA 388 (June 15, 1977) 84 I.D. 282

Although the Government has assumed the burden of proof in mining claim contests of presenting a prima facie case of lack of discovery, once it has done so, the burden shifts to the claimant to prove by a preponderance of the evidence the discovery of a valuable mineral deposit. A prima facie case is established when a Government mineral examiner testifies that she examined the claim and could find no evidence showing the discovery of a valuable mineral deposit.

United States v. Gwendolyn McClurg, et al., 31 IBLA 8 (June 15, 1977)

Where the Government contests a mining claim, it has assumed only the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that his claim is valid. Where a Government mineral examiner testifies that he extensively examined the claims and workings thereon, and had assayed numerous samples taken from the claims but found no evidence of a valuable mineral deposit that would support a discovery, a prima facie case of lack of a mineral discovery has been made.

United States v. A. O. Bartell, 31 IBLA 47 (June 23, 1977)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

In making a prima facie case of lack of discovery of a valuable mineral deposit, the Government has no duty to do the discovery work for the mining claimant. It is incumbent upon the claimant to keep his discovery points available for inspection. A prima facie case is established when a Government mineral examiner gives his expert opinion that he examined the claim and found insufficient values to support a finding of discovery.

United States v. Emma Elizabeth Conner, and Walter T. Nolte, as the Heirs of R. W. Speer, a Last Known Director of the Arlington Gold Mining Co. (Contestee), 31 IBLA 173 (July 5, 1977)

While a mining location on land totally withdrawn may be declared null and void ab initio without hearing, if a claimant alleges facts which would establish an interest in a claim located prior to the withdrawal, the claim may not be declared null and void ab initio without notice and an opportunity for hearing.

Cajen Minerals, Inc., 31 IBLA 188 (July 5, 1977)

There has been no discovery of a valuable mineral deposit within a mining claim where the evidence provides no basis for a reasonable expectation that minerals from the deposit can be mined, removed and marketed at a profit.

Past evidence of successful mining activity has limited probative value in determining whether there is a present discovery of a valuable mineral deposit on a mining claim, and assay reports can be given little weight when they are not supported by evidence as to who took the sample assayed, where it was taken, and what procedures were followed in taking the sample.

United States v. Lee Nicholson, et al., 31 IBLA 224 (July 7, 1977)

Mining claims located for deposits of common varieties of building stone, sand and gravel, if located prior to the Act of July 23, 1955, must be held to be invalid where it is not shown that these materials could have been profitably marketed prior to that date.

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when such minerals were no longer subject to such location, the Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on each claim.

Where the expert witnesses called by the Government testify that prior to July 23, 1955, there was no profitable market for common variety minerals from the subject claims and that it would have been economic folly to undertake the development a mine thereon, a prima facie case of invalidity has been made. Thereafter, upon the failure of the claimant tc prove the contrary by a preponderance of credible evidence, a determination that the claims are invalid is obligatory.

Where the contestee is seeking to validate a group of claims, he must prove that a valuable mineral deposit

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

exists on each individual claim. A showing that all the claims taken as a group satisfy the requirements of discovery is not sufficient.

Where, in a contest to determine the validity of certain mining claims located for common building stone, sand and gravel, the Government charges that the claims were not located prior to the Act of July 23, 1955, which prohibited the subsequent location of such minerals, the finding by the Hearing Examiner and two administrative appellate tribunals that the charge is true and the claims were not timely located requires a holding that the claims are null and void, where such finding is supported by a preponderance of credible evidence.

United States v. Frank and Wanita Melluzzo (Supp. on Judicial Remand), 32 IBLA 46 (Sept. 2, 1977)

Where a mining claim occupies land which has subsequently been withdrawn from the operation of the mining law, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit thereafter increased due to a change in the market.

Where mining claims occupy land which has subsequently been withdrawn from the operation of the mining laws by a notice of proposed classification, 43 CFR 2461.2, the validity of the claim must be tested as of the date of the published notice, as well as of the date of determination. If the claim was not supported by such a discovery at the date of the published notice of classification, the land within the claim located in the classified area would not be excepted from the effect of the withdrawal.

United States v. R. E. Rodgers and Barbara J. Rodgers, 32 IBLA 77 (Sept. 2, 1977)

In order to establish the existence of a discovery on a lode mining claim, there must be found within the limits of the claim a vein or lode of quartz, or other rock in place, bearing mineral of such quality and quantity that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a paying mine. If more than one claim is contested, evidence establishing the existence, or nonexistence, of a discovery must be shown for each claim.

In mining claim contests, the United States has assumed the burden of establishing a prima facie case that no discovery has been made on the mining claims by the contestee; the burden of proof then shifts to the contestee to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of each mining claim. Evidence which may justify further exploration is insufficient either to establish a discovery or to overcome a prima facie case of lack of discovery.

A prima facie case of lack of discovery of a valuable mineral deposit is established when a mineral examiner

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

testifies for the United States that he examined each claim and could find no evidence showing the discovery of a valuable mineral deposit.

When a mineral examiner testifies for the United States that a discovery has not been made on a mining claim, his opinion must be based on a proper factual foundation. However, he is not required to perform discovery work, to explore or sample beyond a claimant's workings, or to excavate or rehabilitate any purportedly mineralized area which is concealed by overburden or is otherwise difficult of access. Under proper circumstances, the testimony of the mineral examiner may establish a prima facie case of lack of discovery even though he was not physically on each mining claim.

United States v. Robert A. Rukke (Registered Agent), Valumines, Inc., et al., 32 IBLA 155 (Sept. 12, 1977)

The Secretary of the Interior has the authority to determine the validity of mining claims on any public lands of the United States, including lands within the National Forest System, after adequate notice and opportunity for hearing. A mining claim contest initiated under the authority of the Secretary of the Interior may be prosecuted by counsel employed by the Department of Agriculture acting on behalf of the Forest Service where such action is in accordance with a Memorandum of Understanding between the agencies.

A mining claim will be declared null and void where the Board's de novo review of the evidence submitted at a hearing, held in accordance with the provisions of the Administrative Procedure Act and presided over by an Administrative Law Judge qualified under the Act, establishes that the claimant has not satisfied the requirements of discovery, and there was no error in the conduct of the proceeding.

United States v. Ernest F. Diven and Richard J. T. Anderson, 32 IBLA 361 (Oct. 25, 1977)

In order to establish the existence of a discovery on a lode mining claim, there must be found within the limits of the claim a vein or lode of quartz, or other rock in place, bearing mineral of such quality and quantity that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a paying mine.

Evidence in a mining claim contest showing only that further exploration might be warranted, is insufficient to establish the discovery of a valuable mineral deposit.

United States v. Lewis L. Netherlin, Gabriele Netherlin, 33 IBLA 86 (Dec. 8, 1977)

A mining claim located after Oct. 21, 1976, for which a notice of recordation required to be filed by sec. 314(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744) has not been filed within 90 days from the date of location is void, and no

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

force and effect can be given to a notice of recordation filed after the 90-day period.

Southwestern Exploration Associates, 33 IBLA 240 (Dec. 28, 1977)

DISCOVERY

Generally

When the Government has presented a prima facie case of lack of discovery of a valuable mineral deposit on a mining claim, the mining claimant then has the burden of establishing by a preponderance of the evidence that the discovery test has been met. Consequently, the ultimate burden of proving discovery is always upon the mining claimant.

United States v. George J. Hunt and A. M. Goodwin, 29 IBLA 86 (Feb. 23, 1977)

Under the mining law discovery of a valuable mineral deposit is the sine qua non for a valid mining claim. State mining laws relating to discovery may only add to the Federal mining law; such laws cannot diminish the Federal requirements for discovery of a valuable mineral deposit on a mining claim located on Federal lands.

In determining whether there has been a discovery of a valuable mineral deposit under the mining laws on a lode mining claim factors such as the extent of the mineral deposits, the number of samples assayed showing only a trace of mineral, and the nature of the samples yielding the high values must be considered.

United States v. Bradley F. Denham, 29 IBLA 185 (Mar. 18, 1977)

High assay reports alone are not evidence of a discovery. The nature of the samples yielding the high values must be considered. Where neither the date of the samples nor the nature of the samples submitted for assay is known, those assays cannot be considered as representative of a valuable mineral deposit within the limits of the mining claim.

Reports of substantial mineral discoveries in the general area of contestee's placer claim some 120 years in the past are of little, if any, significance in establishing the existence of a present discovery on the contested claim.

United States v. John L. Maley and James F. Pagel, 29 IBLA 201 (Mar. 22, 1977)

A lode mining claim for barite is properly declared null and void in the absence of a showing of a discovery on the claim of a deposit of barite which would warrant a prudent man in further expending his labor and means in the reasonable expectation of developing a valuable mine. Evidence of mineralization which may justify

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

further exploration is not sufficient to establish that a discovery of a valuable mineral deposit has been made.

United States v. Howard S. McKenzie, 29 IBLA 270 (Mar. 28, 1977)

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine.

United States v. Lloyd O'Callaghan, Sr., et al., 29 IBLA 333 (Mar. 31, 1977)

A valuable mineral deposit is an accumulation of a valuable mineral in such quantity and such quality that a person would be justified in expending his time and means in a reasonable hope of developing a valuable mine.

Where land occupied by a mining claim has been withdrawn from operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as of the date of the hearing.

When the Government contests a mining claim on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; then the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

In applying the prudent man test of discovery, the cost of extraction, processing and transportation to market of the recovered mineral must be considered because these costs bear on whether a person of ordinary prudence would be justified in the further expenditure of his time and means to develop a valuable mine.

United States v. Fred and Eileen Garner, 30 IBLA 42 (Apr. 18, 1977)

A valuable mineral deposit is an accumulation of a mineral in such quantity and such quality that a person would be justified in expending his time and means in a reasonable hope of developing a valuable mine.

Where land occupied by a mining claim has been withdrawn from operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as of the date of the hearing.

When the Government contests a mining claim on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; then the burden shifts to the claimant to show

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

In applying the prudent man test of discovery, the cost of extraction, processing and transportation to market of the recovered mineral must be considered because these costs bear on whether a person of ordinary prudence would be justified in the further expenditure of his time and means to develop a valuable mine.

Evidence of mineralization which may justify further exploration, but not the development of actual mining operations, is not sufficient to establish that a discovery of a valuable mineral deposit has been made.

United States v. Richard B. Walls, 30 IBLA 333 (June 7, 1977)

A mining claimant must prove a discovery under the prudent man test, including that the mineral can be extracted, removed and marketed at a profit.

In a contest of a patent application for a lode mining claim, the Board of Land Appeals may remand the case for further hearing to complete the record regarding the (1) availability and expense of necessary financing, land and water, (2) the expense of labor, and (3) the expense of compliance with environmental protection laws.

United States v. Pittsburgh Pacific Co., 30 IBLA 388 (June 15, 1977) 84 I.D. 282

In order to support the validity of a mining claim, the claimant must show that he has discovered a mineral deposit and that the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a paying mine. The fact that some minerals may exist which might justify further exploration on the claim is insufficient to show a discovery of a valuable mineral deposit.

United States v. Gwendolyn McClurg, et al., 31 IBLA 8 (June 15, 1977)

The "prudent man" test is the longstanding test to determine whether there has been a discovery of a valuable mineral deposit. To meet this test there must be sufficient mineralization within a claim to warrant a man of ordinary prudence to expend his time and means with a reasonable expectation of developing a valuable mine.

In making a prima facie case of lack of discovery of a valuable mineral deposit, the Government has no duty to do the discovery work for the mining claimant. It is incumbent upon the claimant to keep his discovery points available for inspection. A prima facie case is established when a Government mineral examiner gives

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

his expert opinion that he examined the claim and found insufficient values to support a finding of discovery.

United States v. Emma Elizabeth Conner, and Walter T. Nolte, as the Heirs of P. W. Speer, a Last Known Director of the Arlington Gold Mining Co. (Contestee), 31 IBLA 173 (July 5, 1977)

There has been no discovery of a valuable mineral deposit within a mining claim where the evidence provides no basis for a reasonable expectation that minerals from the deposit can be mined, removed and marketed at a profit.

Past evidence of successful mining activity has limited probative value in determining whether there is a present discovery of a valuable mineral deposit on a mining claim, and assay reports can be given little weight when they are not supported by evidence as to who took the sample assayed, where it was taken, and what procedures were followed in taking the sample.

United States v. Lee Nicholson, et al., 31 IBLA 224 (July 7, 1977)

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine.

When the Government contests a mining claim on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

United States v. Leslie Harling and William Harling, 32 IBLA 29 (Aug. 31, 1977)

Where the contestee is seeking to validate a group of claims, he must prove that a valuable mineral deposit exists on each individual claim. A showing that all the claims taken as a group satisfy the requirements of discovery is not sufficient.

United States v. Frank and Wanita Melluzzo (Supp. on Judicial Remand), 32 IBLA 46 (Sept. 2, 1977)

Where a mining claim occupies land which has subsequently been withdrawn from the operation of the mining law, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

the deposit thereafter increased due to a change in the market.

Where mining claims occupy land which has subsequently been withdrawn from the operation of the mining laws by a notice of proposed classification, 43 CFR 2461.2, the validity of the claim must be tested as of the date of the published notice, as well as of the date of determination. If the claim was not supported by such a discovery at the date of the published notice of classification, the land within the claim located in the classified area would not be excepted from the effect of the withdrawal.

The "marketability rule" requiring a demonstration of present marketability at a profit is (and always has been) applicable to all mining claims, whether for base metals or for precious minerals.

A locator of a mining claim on public land has taken only the initial step in seeking to secure a gratuity from the Government and obtains no rights against the United States until there has been a discovery of a valuable mineral deposit within the limits of the claim.

United States v. R. E. Rodgers and Barbara J. Rodgers, 32 IBLA 77 (Sept. 2, 1977)

In order to establish the existence of a discovery on a lode mining claim, there must be found within the limits of the claim a vein or lode of quartz, or other rock in place, bearing mineral of such quality and quantity that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a paying mine. If more than one claim is contested, evidence establishing the existence, or nonexistence, of a discovery must be shown for each claim.

When land is withdrawn from the operation of the mining laws subject to valid existing rights, such as by the creation of the North Cascades National Park on Oct. 2, 1968, the validity of a mining claim located prior to the withdrawal must be established as of the date of the withdrawal as well as of the date of the hearing.

United States v. Robert A. Rukke (Registered Agent), Valumines, Inc., et al., 32 IBLA 155 (Sept. 12, 1977)

A discovery of a valuable mineral deposit has been made where minerals have been found within the limits of a claim and the evidence is such that a person of ordinary prudence would be justified in the further expenditure of his labor and means in a reasonable prospect of success in developing a valuable mine.

When the Government contests a mining claim on a charge of no discovery, it has by practice assumed the burden of going forward with sufficient evidence to establish a prima facie case; when it has done so, the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

A Government mineral examiner in evaluating a mining claim is under no duty to undertake discovery work or

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

to explore beyond the current workings of a claim and it is incumbent upon the mining claimant to keep discovery points available for inspection by a Government mineral examiner.

Proposed testimony of a witness as to the procedures that would be followed by a person in private industry in making a complete evaluation of a mining claim is properly excluded as irrelevant because it does not have a logical relation to the type of an examination made by a Government mineral examiner to establish the facts on which the validity or invalidity of a mining claim may be determined.

United States (Contestant) v. Earl Frisco and Sandra S. Young (Contestees), 32 IBLA 248 (Sept. 21, 1977)

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a prudent person would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

United States v. John C. Morton, et al., 32 IBLA 263 (Sept. 27, 1977)

The fact that some minerals exist which might justify further exploration on the claim is insufficient to show a valuable mineral deposit.

In applying the prudent man test of discovery, the cost of extraction, processing and transportation to market of the recovered mineral must be considered because these costs bear on whether a person of ordinary prudence would be justified in the further expenditure of his time and means to develop a valuable mine.

United States v. Ernest F. Diven and Richard J. T. Anderson, 32 IBLA 361 (Oct. 25, 1977)

In order to establish the existence of a discovery on a lode mining claim, there must be found within the limits of the claim a vein or lode of quartz, or other rock in place, bearing mineral of such quality and quantity that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a paying mine.

Evidence in a mining claim contest showing only that further exploration might be warranted, is insufficient to establish the discovery of a valuable mineral deposit.

When land is withdrawn from the operation of the mining laws subject to valid existing rights, such as the Organ Pipe Cactus National Monument on Sept. 28, 1976, the validity of a mining claim located prior to the withdrawal must be established as of the date of the withdrawal as well as of the date of the hearing.

United States v. Lewis L. Netherlin, Gabriele Netherlin, 33 IBLA 86 (Dec. 8, 1977)

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

A discovery of a valuable mineral deposit has been made where minerals have been found within the limits of a claim and the evidence is such that a person of ordinary prudence would be justified in the further expenditure of his labor and means in a reasonable prospect of success in developing a valuable mine.

Mineralization that only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization might be found to justify mining or development does not constitute a valuable mineral deposit, i.e., a valuable mineral deposit has not been found simply because the facts might warrant a search for such a deposit.

When the Government contests a mining claim on a charge of no discovery, it has by practice assumed the burden of going forward with sufficient evidence to establish a prima facie case; when it has done so, the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

A Government mineral examiner in evaluating a mining claim is under no duty to undertake discovery work or to explore beyond the current workings of a claim and it is incumbent upon the mining claimant to keep discovery points available for inspection by a Government mineral examiner.

United States v. Beatrice Ann Johnson, 33 IBLA 121 (Dec. 19, 1977)

A Government mineral examiner, versed in mining engineering and/or geology is qualified to evaluate a mining claim for a particular mineral even though he does not possess specific experience as to that mineral.

United States v. Doris Conger Caldwell, 33 IBLA 153 (Dec. 19, 1977)

Geologic Inference

Geologic inference alone cannot support a determination under the mining law that a discovery of a valuable mineral deposit has been made. The claimant must actually expose a valuable mineral deposit physically within the limits of the claim.

United States v. Richard B. Walls, 30 IBLA 333 (June 7, 1977)

Marketability

With respect to materials as common as sand and gravel, a mining claimant must show that by reason of accessibility, bona fides in development, proximity to market, existence of present demand, and other factors, the deposit is of such value that it can be mined, removed and disposed of at a profit, and since common varieties were declared no longer locatable by the Act of July 23,

MINING CLAIMS--Continued

DISCOVERY--Continued

Marketability--Continued

1955, 30 U.S.C. § 611(1970), that a reasonably continuous market has existed from enactment of the statute.

United States v. Lloyd O'Callaghan, Sr., et al., 29 IBLA 333 (Mar. 31, 1977)

A prima facie case has been established when a Government mineral examiner testifies that he has examined the mining claim and found the evidence of mineralization insufficient to support a finding of discovery of a valuable mineral deposit. The fact that there may be a market for limestone from the mining claim at some future date under altered economic conditions is not sufficient to meet the marketability test of discovery.

United States v. Doris Conger Caldwell, 33 IBLA 153 (Dec. 19, 1977)

ENVIRONMENT

In a contest of a patent application for a lode mining claim, the Board of Land Appeals may remand the case for further hearing to complete the record regarding the (1) availability and expense of necessary financing, land and water, (2) the expense of labor, and (3) the expense of compliance with environmental protection laws.

When parties are to offer evidence as to costs, to a mining claimant, of measures required by statute or regulation to mitigate environmental impact from development of a mine, it would be helpful for a Government contestant to assist an intervening State government and the claimant in computation of such costs; however, under 42 U.S.C. § 4332 (1970), an environmental impact statement is not required prior to the nondiscretionary Federal action of issuance of a mineral patent.

United States v. Pittsburgh Pacific Co., 30 IBLA 388 (June 15, 1977) 84 I.D. 282

HEARINGS

Evidence tendered on appeal from a mining contest may only be considered for the limited purpose of determining whether a further hearing is warranted.

United States v. George J. Hunt and A. M. Goodwin, 29 IBLA 86 (Feb. 23, 1977)

Evidence tendered on appeal from an adverse decision in a mining claim contest can only be considered to determine whether a further hearing on the contest should be granted. Where the appellant shows no substantial equitable basis for holding such a hearing and where no substantial expectation appears to exist that such a hearing would produce more conclusive evidence on the issue, a further hearing will not be ordered.

United States v. Bradley F. Denham, 29 IBLA 185 (Mar. 18, 1977)

MINING CLAIMS--Continued

HEARINGS--Continued

Where the Government mineral examiner in a mining claim contest concludes that the claim at issue contains no valuable mineral deposit, and his opinion is based on a sampling taken from a point on the claim indicated by one of the contestees, this opinion will suffice to establish a prima facie case of no discovery and thus will shift the burden of proof onto the contestees.

Evidence tendered for the first time on appeal will be considered only for the limited purpose of determining whether a further hearing is indicated and will be received for that limited purpose only where there is a cogent and convincing reason why such evidence was not submitted at the original hearing.

United States v. John L. Maley and James F. Pagel, 29 IBLA 201 (Mar. 22, 1977)

In a Government contest challenging the validity of mining claims located for a clay-type material, an adequate prima facie case is established where there are expert witness opinions that the deposit is only a common clay or shale and it cannot meet refractory standards. The contestees then must go forward with evidence to rebut the Government's case with a preponderance of the evidence.

United States v. Thomas J. Peck, et al., 29 IBLA 357 (Mar. 31, 1977) 84 I.D. 137

Where land occupied by a mining claim has been withdrawn from operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as of the date of the hearing.

The Government has established a prima facie case when a mineral examiner testifies that he has examined a mining claim and has found the mineral values insufficient to support a finding of discovery.

United States v. Fred and Eileen Garner, 30 IBLA 42 (Apr. 18, 1977)

A mining claim located on land withdrawn from location under the mining laws is null and void ab initio--without legal effect from the beginning. Such a mining claim may properly be declared null and void without a hearing where the records of the Department of the Interior show that the land was withdrawn at the time the claim was located.

Charles R. Nielsen, Pauline Nielsen, 30 IBLA 235 (May 26, 1977)

Where land occupied by a mining claim has been withdrawn from operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as of the date of the hearing.

MINING CLAIMS--Continued

HEARINGS--Continued

The Government has established a prima facie case when a mineral examiner testifies that he has examined a mining claim and has found the mineral values insufficient to support a finding of discovery.

Evidence tendered for the first time on appeal will be considered only for the limited purpose of determining whether a further hearing should be held.

United States v. Richard B. Walls, 30 IBLA 333 (June 7, 1977)

In a proceeding before the Department to determine the validity of a mining claim, notice and an opportunity for an evidentiary hearing is required only where there is a disputed question of fact; where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

David Budinski, et al., 31 IBLA 139 (June 30, 1977)

The Government has established a prima facie case when a mineral examiner testifies that he has examined a mining claim and has found the mineral values insufficient to support a finding of discovery.

United States v. Leslie Harling and William Harling, 32 IBLA 29 (Aug. 31, 1977)

United States (Contestant) v. Earl Frisco and Sandra S. Young (Contestees), 32 IBLA 248 (Sept. 21, 1977)

The rule of evidence excluding hearsay is not strictly adhered to in administrative proceedings, particularly where the evidence, such as assay reports with a proper foundation concerning the sampling, submission of the samples for assaying, and the reputation of the assayer, is competent and relevant. After such reports are admitted, the factfinder may give them appropriate weight according to the circumstances surrounding the specific report.

United States v. Robert A. Rukke (Registered Agent), Valumines, Inc., et al., 32 IBLA 155 (Sept. 12, 1977)

A mining claim will be declared null and void where the Board's de novo review of the evidence submitted at a hearing, held in accordance with the provisions of the Administrative Procedure Act and presided over by an Administrative Law Judge qualified under the Act, establishes that the claimant has not satisfied the requirements of discovery, and there was no error in the conduct of the proceeding.

The Government has established a prima facie case when a mineral examiner testifies that he has examined a mining claim and has found the mineral values insufficient to support a finding of discovery.

United States v. Ernest F. Diven and Richard J. T. Anderson, 32 IBLA 361 (Oct. 25, 1977)

MINING CLAIMS--Continued

HEARINGS--Continued

When a mining claim located in the Papago Indian Reservation is declared invalid for failure to pay annual rental timely, and that fact is not disputed, a hearing is not required as there are no issues of fact involved but only of law.

Louis B. Ellsworth, Jr., 33 IBLA 26 (Nov. 22, 1977)

The Government has established a prima facie case when a mineral examiner testifies that he has examined a mining claim and has found the mineral values insufficient to support a finding of discovery.

A second hearing will not be afforded where a claimant was given notice and an opportunity to appear at a hearing, where she actually was represented at the hearing, and where nothing has been submitted which suggests that another hearing would produce a different result.

United States v. Beatrice Ann Johnson, 33 IBLA 121 (Dec. 19, 1977)

LANDS SUBJECT TO

Lands described in a State selection application under sec. 6(b) of the Alaska Statehood Act are segregated from all forms of appropriation including location under the mining laws from the time the application is filed in the proper office of the BLM. An amendment to a pre-existing application is effective to segregate the land described in the amendment from the time it is filed.

Mining locations made on land segregated from operation of the mining laws are null and void ab initio.

Dennis G. Quinn, 29 IBLA 307 (Mar. 30, 1977)

A mining claim located on land withdrawn from location under the mining laws is null and void ab initio--without legal effect from the beginning. Such a mining claim may properly be declared null and void without a hearing where the records of the Department of the Interior show that the land was withdrawn at the time the claim was located.

Charles R. Nielsen, Pauline Nielsen, 30 IBLA 235 (May 26, 1977)

A mining claim located on land at a time when such land was withdrawn from mineral entry is properly declared null and void ab initio.

Sally Lester, et al., 31 IBLA 43 (June 21, 1977)

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

A mining claim located for a nonmetalliferous mineral on land at a time when such land was withdrawn from mineral entry for nonmetalliferous minerals is properly declared null and void ab initio.

David Budinski, et al., 31 IBLA 139 (June 30, 1977)

Under 30 U.S.C. §§ 162 and 262 (1970), valuable deposits of sodium compounds are not open to location and disposition under the mining laws, but may be disposed of only under the Mineral Leasing Act, except for certain claims under 43 CFR 3501.1-1(b), existent at passage of Mineral Leasing Act of 1920 which have since been maintained in accordance with statute and regulation.

Permian Mud Service, Inc., 31 IBLA 150 (June 30, 1977) 84 I.D. 342

A mining claim located on withdrawn land confers no right on the locator and is null and void ab initio. However, when BLM has so held claims to be null and void and it appears that the claims may not be invalid due to status factors, the case will be remanded for further consideration.

Douglas L. Russell, et al., 31 IBLA 237 (July 12, 1977)

A mining claim located before Aug. 11, 1955, on land within an existing highway material site withdrawal is properly declared null and void as the land was then closed to mineral entry. Void claims located prior to that date were not given life by the Mining Claims Rights Restoration Act of 1955.

Treva L. Berger, 31 IBLA 389 (Aug. 19, 1977)

Publication in the Federal Register of a notice of proposed classification pursuant to 43 CFR 2461.2 will segregate the affected land to the extent indicated in the notice.

Where mining claims occupy land which has subsequently been withdrawn from the operation of the mining laws by a notice of proposed classification, 43 CFR 2461.2, the validity of the claim must be tested as of the date of the published notice, as well as of the date of determination. If the claim was not supported by such a discovery at the date of the published notice of classification, the land within the claim located in the classified area would not be excepted from the effect of the withdrawal.

United States v. R. E. Rodgers and Barbara J. Rodgers, 32 IBLA 77 (Sept. 2, 1977)

MINING CLAIMS--Continued

IANDS SUBJECT TO--Continued

The fact that a mining claimant has held a claim for many years and performed work on the claim does not, by itself, create any rights against the Government which will estop the Government from determining the validity of the claim. It is incumbent upon the locator of a mining claim to exercise considerable care in ascertaining the status of the land embraced in the claim and the limitations of his rights as the holder of an unpatented mining claim. Failure of a Government employee to advise appellant that the land embraced in the mining claim was closed to mining location cannot give life to an invalid claim.

Arthur W. Boone, 32 IBLA 305 (Sept. 30, 1977)

A mining claim located on land at a time when the land is segregated from mining location by a proposed withdrawal is properly declared null and void ab initio. Where the official records of the Department reflect such proposed withdrawal, a hearing is not required to establish the invalidity of the claim.

Mark W. Boone and John L. Dutra, 33 IBLA 32 (Nov. 25, 1977)

Where land has been reconveyed to the United States and the reconveyance reserves the minerals to the grantor, the United States has no authority to recognize a claim for the minerals under the mining laws, 30 U.S.C. § 22 (1970), because the minerals are not owned by the United States. Such a claim is properly declared null and void, regardless of whether or not a claimant performed assessment work or paid taxes on the land.

All Glory to God Church, 33 IBLA 61 (Dec. 5, 1977)

Land which has been patented without a reservation of minerals to the United States or which otherwise has been removed from the operation of the United States mining laws is not available for the location of mining claims. Mining claims located on such land after it is so removed are null and void ab initio. Attempts to record such claims under 43 U.S.C.A. § 1744 (West Supp. 1977) are properly rejected.

Paul S. Coupey, 33 IBLA 178 (Dec. 20, 1977)

LOCATABILITY OF MINERAL

Generally

In determining whether a deposit of clay is locatable as a valuable mineral deposit under the mining laws, there is a distinction between a deposit considered to be a common or ordinary clay, which is not locatable, and a locatable deposit having exceptional qualities useful and marketable for purposes for which common clays cannot be used.

"Common Clay." A "common clay" not locatable under the mining laws does not include clay having exceptional qualities which meets refractory and other quality standards for highgrade ceramic products or other products requiring a high refractoriness, or which is useful for certain industrial uses, such as in the oil and

MINING CLAIMS--Continued

LOCATABILITY OF MINERAL--Continued

Generally--Continued

oil well drilling industries, outside the manufacture of general clay products. It does include, however, clay usable or used only for structural and other heavy clay products, for pressed or face brick, as well as ordinary brick, and for pottery and ordinary earthenware and stoneware. The fact industrial and technological changes may make a certain clay deposit valuable for a given major manufacturer of brick, tile and other clay products, because it meets its peculiar specifications for blends with other raw materials, does not warrant a change from Departmental precedents and a strong Congressional policy establishing that clay usable only for such purposes is a common clay not locatable under the mining laws.

United States v. Thomas J. Peck, et al., 29 IBLA 357 (Mar. 31, 1977) 84 I.D. 137

Leasable Compounds

Under 30 U.S.C. §§ 162 and 262 (1970), valuable deposits of sodium compounds are not open to location and disposition under the mining laws, but may be disposed of only under the Mineral Leasing Act, except for certain claims under 43 CFR 3501.1-1(b), existent at passage of Mineral Leasing Act of 1920 which have since been maintained in accordance with statute and regulation.

Permian Mud Service, Inc., 31 IBLA 150 (June 30, 1977) 84 I.D. 342

LOCATION

Where, in a contest to determine the validity of certain mining claims located for common building stone, sand and gravel, the Government charges that the claims were not located prior to the Act of July 23, 1955, which prohibited the subsequent location of such minerals, the finding by the Hearing Examiner and two administrative appellate tribunals that the charge is true and the claims were not timely located requires a holding that the claims are null and void, where such finding is supported by a preponderance of credible evidence.

United States v. Frank and Wanita Melluzzo (Supp. on Judicial Remand), 32 IBLA 46 (Sept. 2, 1977)

The fact that a mining claimant has held a claim for many years and performed work on the claim does not, by itself, create any rights against the Government which will estop the Government from determining the validity of the claim. It is incumbent upon the locator of a mining claim to exercise considerable care in ascertaining the status of the land embraced in the claim and the limitations of his rights as the holder of an unpatented mining claim. Failure of a Government employee to advise appellant that the land embraced in the mining claim was closed to mining location cannot give life to an invalid claim.

A mining claim located in a powersite at a time when the land was withdrawn from mineral entry is null and void ab initio. However, such a claim embracing a discovery may still be valid under a new location made by

MINING CLAIMS--Continued

LOCATION--Continued

holding and working the claim pursuant to 30 U.S.C. § 38 (1970) while the land was open to mining location under the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 et seq. (1970).

Under 30 U.S.C. § 38 (1970), holding and working a mining claim in open, notorious, adverse possession for the period of time required to establish adverse possession of mining claims, during which time the land is open to mining location, is tantamount to a new location or relocation, dispensing with proof of valid notices. However, sec. 38 does not obviate the necessity of a discovery of a valuable mineral in order to establish a valid claim.

Arthur W. Boone, 32 IBLA 305 (Sept. 30, 1977)

LODE CLAIMS

In determining whether there has been a discovery of a valuable mineral deposit under the mining laws on a lode mining claim factors such as the extent of the mineral deposits, the number of samples assayed showing only a trace of mineral, and the nature of the samples yielding the high values must be considered.

United States v. Bradley F. Denham, 29 IBLA 185 (Mar. 18, 1977)

MARKETABILITY

The "marketability rule" requiring a demonstration of present marketability at a profit is (and always has been) applicable to all mining claims, whether for base metals or for precious minerals.

United States v. R. E. Rodgers and Barbara J. Rodgers, 32 IBLA 77 (Sept. 2, 1977)

MILLSITES

Where a millsite is not being used for mining or milling purposes in connection with a mining claim owned by the owner of the millsite, and at the time of contest there is no quartz mill or reduction works on the site, the millsite must be declared null and void.

United States v. Wayne E. Highley, 30 IBLA 21 (Apr. 7, 1977)

Where millsites are not used for mining or milling purposes in conjunction with a mining claim, and where no quartz or reduction works exist on the millsites, the millsites are properly declared null and void.

United States v. Robert A. Rukke (Registered Agent), Valumines, Inc., et al., 32 IBLA 155 (Sept. 12, 1977)

MINING CLAIMS--Continued

PATENT

The Secretary of the Interior is not authorized to issue a patent to a mining claim until he is satisfied that the requirements of the law have been met.

United States v. Fred and Eileen Garner, 30 IBLA 42 (Apr. 18, 1977)

A mining claimant must prove a discovery under the prudent man test, including that the mineral can be extracted, removed and marketed at a profit.

United States v. Pittsburgh Pacific Co., 30 IBLA 388 (June 15, 1977) 84 I.D. 282

POSSESSORY RIGHT

A mining claim located in a powersite at a time when the land was withdrawn from mineral entry is null and void ab initio. However, such a claim embracing a discovery may still be valid under a new location made by holding and working the claim pursuant to 30 U.S.C. § 38 (1970) while the land was open to mining location under the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 et seq. (1970).

Under 30 U.S.C. § 38 (1970), holding and working a mining claim in open, notorious, adverse possession for the period of time required to establish adverse possession of mining claims, during which time the land is open to mining location, is tantamount to a new location or relocation, dispensing with proof of valid notices. However, sec. 38 does not obviate the necessity of a discovery of a valuable mineral in order to establish a valid claim.

Arthur W. Boone, 32 IBLA 305 (Sept. 30, 1977)

Where a corporation allegedly acquired a group of unpatented mining claims, but the instruments of conveyance and the abstract of title are subject to various objections by the Government's title examiner, which the corporation finds are difficult or impossible to cure, the corporation nonetheless may receive a patent to the claims pursuant to the Act of July 9, 1870 (R.S. § 2332; 30 U.S.C. § 38 (1970)), by demonstrating its qualifications under that Act.

Where it becomes necessary for a corporate applicant for mineral patent under R.S. § 2332, 30 U.S.C. § 38 (1970) to demonstrate that it and its predecessors have held and worked the subject mining claims for a specific term of years, the applicant may tack the predecessor's period of possession to its own if there was a privity of interest between them which was demonstrated by any agreement, conveyance or understanding, the purpose of which was to transfer the right and possession of the previous adverse claimant to the successor, and this is accompanied by actual delivery of possession.

An applicant for a mineral patent under 30 U.S.C. § 38 (1970) may be credited with actual possession and working of the claims for the period when the claims were occupied and worked by the claimant's lessee who recognized the title asserted by the claimant.

An applicant for a mineral patent under 30 U.S.C. § 38 (1970) may be credited with actual possession and

MINING CLAIMS--Continued

POSSESSORY RIGHT--Continued

working of the claims for the period when the claims were occupied and worked by others under a conditional contract of sale with the claimant, as well as the period after the claimant lawfully declared the contract forfeited but the putative purchasers continued to hold and work the claims, contending the continued validity of the sales contract, during the course of the claimant's litigation to eject them, which ultimately was successful.

Alaska Placer Co., 33 IBLA 187 (Dec. 21, 1977) 84 I.D. 990

POWER SITE LANDS

Where prior to 1920 a powersite withdrawal was created by executive order under authority of the Act of June 25, 1910, the withdrawn land remained open to the location of mining claims for metalliferous minerals until passage of the Federal Power Act on June 10, 1920, which closed powersites to all entry, location or disposal. Any mining claim located thereafter on powersite lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act or the location of the claim has been made in accordance with the Act of Aug. 11, 1955, 30 U.S.C. § 621 (1970). The latter Act did not operate retroactively to validate void claims.

Henry Stagnaro, 31 IBLA 357 (July 25, 1977)

RECORDATION

A mining claim located after Oct. 21, 1976, for which a notice of recordation required to be filed by sec. 314(b) of the Federal Land Policy and Management Act of 1976, has not been filed within 90 days from the date of location is void, and the Department may not accept or give force to a notice of recordation filed after the 90-day period.

Effect of Failure to Record Timely Under Sec. 314(b), Federal Land Policy and Management Act of 1976, M-36889 (May 17, 1977) 84 I.D. 188

A mining claim located after Oct. 21, 1976, for which a notice of recordation required to be filed by sec. 314(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744) has not been filed within 90 days from the date of location is void, and no force and effect can be given to a notice of recordation filed after the 90-day period.

Southwestern Exploration Associates, 33 IBLA 240 (Dec. 28, 1977)

SPECIAL ACTS

The provision in 43 CFR 3825.1(b) that failure to pay annual rental on or before the anniversary date of a mining claim located in the Papago Indian Reservation "shall be deemed sufficient grounds for invalidating the claim" is directory, not mandatory. Where the mining claimant does not pay rental for 2 years on two claims and is 1-1/2 years late on other claims, and

MINING CLAIMS--Continued

SPECIAL ACTS--Continued

where he has not paid the rental prior to receiving decisions from the Bureau of Land Management holding the claims invalid, the mining claims must be held invalid.

Louis B. Ellsworth, Jr., 33 IBLA 26 (Nov. 22, 1977)

Where a corporation allegedly acquired a group of unpatented mining claims, but the instruments of conveyance and the abstract of title are subject to various objections by the Government's title examiner, which the corporation finds are difficult or impossible to cure, the corporation nonetheless may receive a patent to the claims pursuant to the Act of July 9, 1870 (R.S. § 2332; 30 U.S.C. § 38 (1970)), by demonstrating its qualifications under that Act.

Where it becomes necessary for a corporate applicant for mineral patent under R.S. § 2332, 30 U.S.C. § 38 (1970) to demonstrate that it and its predecessors have held and worked the subject mining claims for a specific term of years, the applicant may tack the predecessor's period of possession to its own if there was a privity of interest between them which was demonstrated by any agreement, conveyance or understanding, the purpose of which was to transfer the right and possession of the previous adverse claimant to the successor, and this is accompanied by actual delivery of possession.

An applicant for a mineral patent under 30 U.S.C. § 38 (1970) may be credited with actual possession and working of the claims for the period when the claims were occupied and worked by the claimant's lessee who recognized the title asserted by the claimant.

An applicant for a mineral patent under 30 U.S.C. § 38 (1970) may be credited with actual possession and working of the claims for the period when the claims were occupied and worked by others under a conditional contract of sale with the claimant, as well as the period after the claimant lawfully declared the contract forfeited but the putative purchasers continued to hold and work the claims, contending the continued validity of the sales contract, during the course of the claimant's litigation to eject them, which ultimately was successful.

Alaska Placer Co., 33 IBLA 187 (Dec. 21, 1977)
84 I.D. 990

SPECIFIC MINERAL(S) INVOLVED

Clay

In determining whether a deposit of clay is locatable as a valuable mineral deposit under the mining laws, there is a distinction between a deposit considered to be a common or ordinary clay, which is not locatable, and a locatable deposit having exceptional qualities useful and marketable for purposes for which common clays cannot be used.

In a Government contest challenging the validity of mining claims located for a clay-type material, an adequate prima facie case is established where there are expert witness opinions that the deposit is only a common clay or shale and it cannot meet refractory standards. The contestees then must go forward with

MINING CLAIMS--Continued

SPECIFIC MINERAL(S) INVOLVED--Continued

Clay--Continued

evidence to rebut the Government's case with a preponderance of the evidence.

"Common Clay." A "common clay" not locatable under the mining laws does not include clay having exceptional qualities which meets refractory and other quality standards for highgrade ceramic products or other products requiring a high refractoriness, or which is useful for certain industrial uses, such as in the oil and oil well drilling industries, outside the manufacture of general clay products. It does include, however, clay usable or used only for structural and other heavy clay products, for pressed or face brick, as well as ordinary brick, and for pottery and ordinary earthenware and stoneware. The fact industrial and technological changes may make a certain clay deposit valuable for a given major manufacturer of brick, tile and other clay products, because it meets its peculiar specifications for blends with other raw materials, does not warrant a change from Departmental precedents and a strong Congressional policy establishing that clay usable only for such purposes is a common clay not locatable under the mining laws.

United States v. Thomas J. Peck, et al., 29 IBLA 357 (Mar. 31, 1977) 84 I.D. 137

SURFACE USES

In a proceeding under sec. 5 of the Surface Resources Act of July 23, 1955, to determine the rights of the Government and a mining claimant as to the use and management of the surface and its resources on certain mining claims, it is incumbent upon the holder of a claim to demonstrate a discovery of a valuable mineral deposit within the claim as of the time of the Act, and also at the time of the hearing.

Under sec. 5 of the Surface Resources Act of July 23, 1955, the effect of a decision that no mineral discovery has been shown is to permit the Government to manage and dispose of the vegetative and other surface resources without disturbing claimant's right to develop his mining claims by using the subsurface and surface to the extent necessary to conduct his mining operations.

United States v. A. O. Bartell, 31 IBLA 47 (June 23, 1977)

WITHDRAWN LAND

Where land occupied by a mining claim has been withdrawn from operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as of the date of the hearing.

United States v. Fred and Eileen Garner, 30 IBLA 42 (Apr. 18, 1977)

United States v. Richard B. Walls, 30 IBLA 333 (June 7, 1977)

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

A mining claim which at the time of its location is situated on withdrawn land confers no rights on the locator and is void ab initio.

Rod Knight, 30 IBLA 224 (May 26, 1977)

A mining claim located on land withdrawn from location under the mining laws is null and void ab initio--without legal effect from the beginning. Such a mining claim may properly be declared null and void without a hearing where the records of the Department of the Interior show that the land was withdrawn at the time the claim was located.

Charles R. Nielsen, Pauline Nielsen, 30 IBLA 235 (May 26, 1977)

A mining claim located on land at a time when such land was withdrawn from mineral entry is properly declared null and void ab initio.

Sally Lester, et al., 31 IBLA 43 (June 21, 1977)

A mining claim located for a nonmetalliferous mineral on land at a time when such land was withdrawn from mineral entry for nonmetalliferous minerals is properly declared null and void ab initio.

David Budinski, et al., 31 IBLA 139 (June 30, 1977)

Mining claims located upon land which has been previously withdrawn from all forms of entry are null and void ab initio, creating no rights in the locator.

While a mining location on land totally withdrawn may be declared null and void ab initio without hearing, if a claimant alleges facts which would establish an interest in a claim located prior to the withdrawal, the claim may not be declared null and void ab initio without notice and an opportunity for hearing.

Cajen Minerals, Inc., 31 IBLA 188 (July 5, 1977)

A mining claim located on withdrawn land confers no right on the locator and is null and void ab initio. However, when BLM has so held claims to be null and void and it appears that the claims may not be invalid due to status factors, the case will be remanded for further consideration.

Douglas L. Russell, et al., 31 IBLA 237 (July 12, 1977)

Where prior to 1920 a powersite withdrawal was created by executive order under authority of the Act of June 25, 1910, the withdrawn land remained open to the location of mining claims for metalliferous minerals until passage of the Federal Power Act on June 10, 1920, which closed powersites to all entry, location or disposal. Any mining claim located thereafter on powersite lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

of the Federal Power Act or the location of the claim has been made in accordance with the Act of Aug. 11, 1955, 30 U.S.C. § 621 (1970). The latter Act did not operate retroactively to validate void claims.

Land reserved for a reservoir site by executive order under authority of the Pickett Act of June 25, 1910, to conserve water for irrigation purposes, remained open to the location of mining claims for metalliferous minerals, and the provisions of the Federal Power Act of June 10, 1920, would not operate to bar the location of such claims unless and until a powersite classification was subsequently imposed.

Henry Stagnaro, 31 IBLA 357 (July 25, 1977)

A mining claim located before Aug. 11, 1955, on land within an existing highway material site withdrawal is properly declared null and void as the land was then closed to mineral entry. Void claims located prior to that date were not given life by the Mining Claims Rights Restoration Act of 1955.

Treva L. Berger, 31 IBLA 389 (Aug. 19, 1977)

Mining claims located on land previously withdrawn from entry under the mining laws are properly declared null and void ab initio.

W. R. C. Croley, 32 IBLA 5 (Aug. 24, 1977)

Mining claims and millsites located upon land which has been previously withdrawn from entry under the mining laws by a first-form withdrawal are null and void ab initio.

Everett E. Willmarth, et al., 32 IBLA 145 (Sept. 12, 1977)

When land is withdrawn from the operation of the mining laws subject to valid existing rights, such as by the creation of the North Cascades National Park on Oct. 2, 1968, the validity of a mining claim located prior to the withdrawal must be established as of the date of the withdrawal as well as of the date of the hearing.

United States v. Robert A. Rukke (Registered Agent), Valumines, Inc., et al., 32 IBLA 155 (Sept. 12, 1977)

A mining claim located on land at a time when the land is segregated from mining location by a proposed withdrawal is properly declared null and void ab initio. Where the official records of the Department reflect such proposed withdrawal, a hearing is not required to establish the invalidity of the claim.

Mark W. Boone and John L. Dutra, 33 IBLA 32 (Nov. 25, 1977)

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

When land is withdrawn from the operation of the mining laws subject to valid existing rights, such as the Organ Pipe Cactus National Monument on Sept. 28, 1976, the validity of a mining claim located prior to the withdrawal must be established as of the date of the withdrawal as well as of the date of the hearing.

United States v. Lewis L. Netherlin, Gabriele Netherlin, 33 IBLA 86 (Dec. 8, 1977)

MINING CLAIMS RIGHTS RESTORATION ACT

Where prior to 1920 a powersite withdrawal was created by executive order under authority of the Act of June 25, 1910, the withdrawn land remained open to the location of mining claims for metalliferous minerals until passage of the Federal Power Act on June 10, 1920, which closed powersites to all entry, location or disposal. Any mining claim located thereafter on powersite lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act or the location of the claim has been made in accordance with the Act of Aug. 11, 1955, 30 U.S.C. § 621 (1970). The latter Act did not operate retroactively to validate void claims.

Henry Stagnaro, 31 IBLA 357 (July 25, 1977)

MINING OCCUPANCY ACT

GENERALLY

A mining claim void ab initio may be a proper basis for a conveyance under the Mining Claims Occupancy Act, but pursuant to 30 U.S.C. § 706 (1970) trespass damages should ordinarily be assessed.

Feliciano Y. Jimenez, Margarita R. Jimenez, 30 IBLA 82 (Apr. 27, 1977)

QUALIFIED APPLICANT

The fact that an applicant for relief under the Mining Claims Occupancy Act, as amended, 30 U.S.C. § 701 et seq. (1970), subsequent to filing the application, claims to be the trustee of an oral trust in a mining claim held for the benefit of her son, who occupied the claim, does not affect the statutory requirement that in order for an applicant to qualify under the Act he or she must be a residential occupant-owner. The applicant did not occupy the claim and her son did not file an application. Therefore, her application was properly rejected.

Jessie A. Brown (On Reconsideration), 28 IBLA 339 (Jan. 17, 1977)

MULTIPLE MINERAL DEVELOPMENT ACT

GENERALLY

The Multiple Mineral Development Act did not amend the Mineral Leasing Act to authorize the issuance of prospecting permits for coal which cover lands subject to mining claims.

The Effect of Mining Claims on Secretarial Authority to Issue Prospecting Permits for Coal and Phosphate, M-36893 (Aug. 2, 1977) 84 I.D. 442

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

GENERALLY

An application for a communication site under 43 U.S.C. § 961 (1970) should be denied where utilization of an existing right-of-way is practical under 43 U.S.C. § 1763 (19__) and where the proposed site would have an adverse impact on the environment.

"Practical." Under 43 U.S.C. § 1763 (19__), utilization of a nearby existing communication site is practical where the site is suitable and the expense of utilization would not be unreasonable as compared with environmental damage from a proliferation of sites.

Jicarilla Apache Indian Tribe, 29 IBLA 57 (Feb. 16, 1977)

It is not necessary for the Government to prepare an environmental impact statement before issuing a complaint in a mining claim contest, as the determination of the validity of a mining claim is not a "major Federal action" within the ambit of sec. 102 of the National Environmental Policy Act of 1969, 42 U.S.C. § 4332 (1970).

United States v. Ernest F. Diven and Richard J. T. Anderson, 32 IBLA 361 (Oct. 25, 1977)

The Bureau of Land Management may require the execution of special stipulations, including a no-surface-occupancy stipulation, to protect environmental and other land use values, as a condition for issuing an oil and gas lease. Where the Bureau of Land Management, in a decision reguiring a no-surface-occupancy stipulation along a proposed wild and scenic river corridor, has considered all information available to it, has adequately weighed the factors involved, and the appellant has not shown sufficient reason to change the result, the decision will be upheld.

Questa Petroleum Co., 33 IBLA 116 (Dec. 16, 1977)

ENVIRONMENTAL STATEMENTS

Where an administrative decision is made that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review if it appears to have been made by an authorized officer, in good faith, based upon a proper and sufficient environmental analysis record compiled in accordance with

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969--Continued

ENVIRONMENTAL STATEMENTS--Continued

established procedures, and is the reasonable result of his study of such record.

Citizens' Committee to Save Our Public Lands, 29 IBLA 48 (Feb. 16, 1977)

Where the Bureau of Land Management denies a request for the filing of an Environmental Impact Statement for a single planned timber sale but is in the process of preparing a detailed Environmental Impact Statement for the sustained yield unit which includes the parcel in question, the probability that the district-wide statement will adequately meet the requirements of NEPA with respect to the sale tract in issue justifies a denial of a request for a statement directed specifically to the smaller included sale.

Harold P. Canady, et al., 29 IBLA 69 (Feb. 23, 1977)

When parties are to offer evidence as to costs, to a mining claimant, of measures required by statute or regulation to mitigate environmental impact from development of a mine, it would be helpful for a Government contestant to assist an intervening State government and the claimant in computation of such costs; however, under 42 U.S.C. § 4332 (1970), an environmental impact statement is not required prior to the nondiscretionary Federal action of issuance of a mineral patent.

United States v. Pittsburgh Pacific Co., 30 IBLA 388 (June 15, 1977) 84 I.D. 282

Where by final judgment a court has ordered that until an appropriate environmental impact statement is issued, the Bureau of Land Management will issue authorization for livestock grazing only on an annual basis, a grazing lease can be renewed only on an annual basis, even though the grazing unit has been pledged as security for a bona fide loan.

Ralph H. and Jacqueline L. Rainwater, 31 IBLA 377 (Aug. 8, 1977)

Where one objects to the Bureau of Land Management's decision to offer a certain tract of timber for sale on the grounds that an environmental impact statement for the single planned timber sale has not been prepared and that such a sale would violate the sustained yield provisions of the O&C Act of Aug. 28, 1937, 43 U.S.C. § 1181a (1970), the Bureau decision will be upheld when the objecting party fails to provide any evidence to support its contentions and a program environmental impact statement for the sustained yield unit which includes the parcel in question is in the process of being prepared.

Headwaters, 33 IBLA 91 (Dec. 16, 1977)

NATIONAL PARK SERVICE

GENERALLY

Under the Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1970), if the lands embraced within an oil and gas lease application are under surface jurisdiction of a service or bureau within the Department of the Interior, as are the National Park Service and the Bureau of Reclamation, the consent of the Secretary of the Interior is necessary under the Act to the leasing of the land. Where the National Park Service recommends that oil and gas leases for lands within the boundaries of the Chickasaw National Recreation Area be rejected in order to maintain the area for the purposes for which it was established, it is proper to accept this recommendation and reject the offers.

Daphfine Shear, David L. Shear, 29 IBLA 33 (Feb. 10, 1977)

NOTICE

GENERALLY

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

Universal Resources Corp., et al., 31 IBLA 61 (June 23, 1977)

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

Verner F. Sorenson, 32 IBLA 341 (Oct. 21, 1977)

OIL AND GAS LEASES

GENERALLY

An assessment greater than the normal royalty charge may be required for oil and gas that are wasted.

Response to Feb. 17, 1976, Request from the General Accounting Office: Interpretation of Mineral Leasing Act of 1920, and Outer Continental Shelf Lands Act Royalty Clause, M-36888 (Oct. 4, 1976) 84 I.D. 54

Where the State Office, following a recommendation of the National Park Service rejects an application for an oil and gas lease in the Lake Mead National Recreation Area on the basis of a general environmental review of the consequences of oil and gas leasing in the Recreation Area, but which does not specifically show that the lands involved are of a particular value in the Recreation Area as a whole and that leasing subject to stipulations will not suffice to protect the recreation and other values of the land, the case will be remanded for

OIL AND GAS LEASES--Continued

GENERALLY--Continued

a particular application of the environmental review to that land.

Robert R. Wahl, Howard Yee, 28 IBLA 305 (Jan. 13, 1977)

Whereas 30 CFR 221.48 and 221.50 clearly indicate the lessee must pay royalty on all production, the lessee is obligated to pay full value on all gas wasted (221.35), and the supervisor has no discretion to collect less than the full value of gas wasted.

Computation of Moneys Due the United States on Oil and Gas Lost as a Result of Pennzoil's Blowout, M-36888 (Supp.) (Jan. 19, 1977) 84 I.D. 64

Where a regulation is amended in a way that benefits an oil and gas lessee, the Department may, in the absence of intervening rights of third parties or prejudice to the interests of the United States, apply the amendment to pending cases.

Howard S. Bugbee, 29 IBLA 30 (Feb. 8, 1977)

The U.S. Geological Survey is the Secretary's technical expert in matters concerning geological evaluation of tracts of land offered at a sale of competitive oil and gas leases, and the Secretary is entitled to rely on the Survey's reasoned analysis.

Frances J. Richmond, 29 IBLA 137 (Mar. 3, 1977)

An appeal to the Board of an automatic termination of an oil and gas lease will be dismissed as not ripe where appellant sends the appeal to the Board before a Notice of Termination of Lease has been issued and a Petition for Reinstatement rejected by the State Office, Bureau of Land Management.

Read & Stevens, Inc.; Franklin, Aston & Fair, Ltd.; and Colorado Interstate Gas Co., 29 IBLA 154 (Mar. 4, 1977)

The interpretation of the Mineral Leasing Act of 1920 set forth in the Oct. 4, 1976, Solicitor's Opinion (M-36888) is compelled by the statute.

Terms of an oil and gas lease inconsistent with the statute are equally as invalid as a regulation which operates to create a rule out of harmony with the statute.

A lessee gains no rights through a lease which could not be bestowed lawfully, since regulations or lease terms inconsistent with the statute are invalid.

The involuntary invalidation of a lease term does not amount to pro tanto cancellation of the lease.

The Oct. 4, 1976, Solicitor's Opinion (M-36888), in effect, found that the Secretary, by permitting exemptions from royalty requirements for oil and gas used

OIL AND GAS LEASES--Continued

GENERALLY--Continued

for production purposes or unavoidably lost, was alienating the royalty interest of the United States on certain leases without authority to do so.

Court cases indicate that it is in the Secretary's discretion to apply the corrected interpretation of the statutes in the collection of additional royalty retroactively or prospectively based on equitable considerations.

The Secretary is limited in the exercise of this authority only by the rule of estoppel where the application of the corrected interpretation of law threatens to work a serious injustice and if the public's interest would not be unduly damaged by the imposition of estoppel.

Effect of Oct. 4, 1976, Solicitor's Opinion M-36888, M-36888 (Supp. II) (Mar. 9, 1977) 84 I.D. 171

The U.S. Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

Coquina Oil Corp., 29 IBLA 310 (Mar. 30, 1977)

Although the Bureau of Land Management may require such special stipulations as are necessary for the protection of the lands embraced in any lease, proposed special stipulations must be supported by valid reasons which will be weighed by this Department with due regard for the public interest. It is the Bureau's responsibility to impose stipulations which are necessary, appropriate and reasonably related to oil and gas activities, and a stipulation which would forbid the lessee to occupy the surface must be set aside on appeal where BLM fails to provide adequate justification for its imposition and fails to show that it has considered less stringent stipulations.

Neva H. Henderson, 31 IBLA 217 (July 6, 1977)

The authorized officer may not deem an oil and gas rental payment to have been timely filed, pursuant to 43 CFR 1821.2-2(g) if it is received at the State Office when it is not open to the public, even though the payment is presented on the last day in which payment can be made. Such payment is deemed to have been made on the day and hour the office is next open to business, as provided in 43 CFR 1821.2-2(d).

It is proper to deny a petition for reinstatement of an oil and gas lease terminated for failure to pay rental on time as required by sec. 31 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 188(b) (1970), where 20 minutes before the State Office closes to the public on the last day on which rental can be paid, petitioner instructs by telephone an agent who lives in the vicinity of the State Office to make the payment and the agent who alleges she was delayed by traffic and security measures makes payment after the office is closed to the public. In such circumstances the petitioner has not shown that his failure to pay the rental on or before the anniversary date of the lease

OIL AND GAS LEASES--Continued.

GENERALLY--Continued

was justifiable or not due to a lack of reasonable diligence.

Bob Burch, 32 IBLA 93 (Sept. 12, 1977)

In determining whether an oil and gas lessee exercised reasonable diligence to warrant reinstatement of a terminated lease the postmark date on the rental payment envelope is generally deemed the date of mailing unless there is satisfactory evidence to support an assertion that mailing occurred at an earlier date.

David R. Smith and Darla L. Smith, 33 IBLA 63 (Dec. 5, 1977)

Noncompetitive oil and gas leases are issued for a primary term of 10 years. Such leases expire automatically by operation of law at the end of their 10-year terms unless the presence of one of the statutory grounds for extension of the term is established.

Duncan Miller, 33 IBLA 83 (Dec. 8, 1977)

Where, rather than delay action on an oil and gas lease offer pending a wilderness review and management decision pursuant to sec. 603 of the Federal Land Policy and Management Act, the Bureau of Land Management proposes to issue the lease immediately subject to a "no surface occupancy" stipulation under the apparently mistaken impression that the applicant had so reguested, the decision will be set aside and action on the lease offer will be deferred until a final decision can be made.

Dell K. Hatch and Amoco Production Co., 33 IBLA 138 (Dec. 19, 1977)

ACQUIRED LANDS LEASES

An oil and gas lease offer made pursuant to the Mineral Leasing Act for Acquired Lands is properly rejected where the subject lands are not acquired lands but, rather, are patented with a reservation of mineral rights in the United States.

John O. Clay, 28 IBLA 353 (Jan. 24, 1977)

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest, filed before Sept. 30, 1976, must have been accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which was defective for failure to comply with this mandatory regulation must be rejected where it was filed in the simultaneous drawing procedure.

Duncan Miller, 29 IBLA 1 (Feb. 7, 1977)

Mary Nan Spear, 31 IBLA 386 (Aug. 16, 1977)

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

Under the Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1970), if the lands embraced within an oil and gas lease application are under surface jurisdiction of a service or bureau within the Department of the Interior, as are the National Park Service and the Bureau of Reclamation, the consent of the Secretary of the Interior is necessary under the Act to the leasing of the land. Where the National Park Service recommends that oil and gas leases for lands within the boundaries of the Chickasaw National Recreation Area be rejected in order to maintain the area for the purposes for which it was established, it is proper to accept this recommendation and reject the offers.

Daphfine Shear, David L. Shear, 29 IBLA 33 (Feb. 10, 1977)

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. When an offeror submits, on appeal, a copy of such statement but the date on the statement differs from the date on the card, and the offeror does not allege he filed the statement simultaneously with the offer, such offer must be rejected for failure to comply with a mandatory regulation.

Duncan Miller, 29 IBLA 43 (Feb. 16, 1977)

Where acquired lands are under the jurisdiction of a bureau of the Department of the Interior, the Secretary is the one whose consent is necessary to the leasing of the land. The Bureau's views, of course, will be considered carefully. Where its views are merely conclusionary, it is proper to remand the case to ascertain the factual basis of such conclusions and whether leasing would be permissible if coupled with appropriate stipulations. The Bureau of Reclamation is not an "agency" within the ambit of that term in the Acquired Lands Mineral Leasing Act. 30 U.S.C. §§ 351-59 (1970).

The Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. §§ 351-59 (1970), reguires that the consent of the administrative agency having jurisdiction of the acquired land described in a lease offer be obtained prior to the issuance of an oil and gas lease for such land. The Department of the Interior has no authority to lease such land where the consent is withheld.

Walter W. Sapp, 29 IBLA 319 (Mar. 30, 1977)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1970), reguires that the consent of the administrative agency having jurisdiction of the acquired land described in a lease offer be obtained prior to the issuance of an oil and gas lease for such land. The Department of the Interior has no discretionary authority to lease such land where the consent is withheld.

Charles F. Hajek and Frederick L. Smith, 29 IBLA 330 (Mar. 31, 1977)

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

Where material involving a prior mineral reservation on acquired lands is first submitted on appeal, and the effect of a State statute and State court decree is in issue, it is appropriate to remand the case to the BLM State Office for further consideration.

A. N. Henderson, 30 IBLA 8 (Apr. 4, 1977)

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest, filed before Oct. 28, 1976, must have been accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which was defective for failure to comply with this mandatory regulation must be rejected where it was filed in the simultaneous drawing procedure.

Vernon C. Howell, 30 IBLA 70 (Apr. 18, 1977)

The Bureau of Reclamation is not an "agency" within the ambit of that term in the Acquired Lands Mineral Leasing Act, 30 U.S.C. §§ 351-59 (1970). Where acquired lands are under the jurisdiction of a Bureau of the Department of the Interior, it is the Secretary's consent which is necessary to the leasing of land, and while the Bureau's views will be given careful consideration, where such views are merely conclusionary, it is proper to remand the case to ascertain the factual basis for such conclusions and to determine whether leasing may be permissible if coupled with appropriate stipulations.

Shell Oil Co., 30 IBLA 187 (May 19, 1977)

The Bureau of Reclamation is not an "agency" within the ambit of that term in the Acquired Lands Mineral Leasing Act. 30 U.S.C. §§ 351-59 (1970). Where acquired lands are under the jurisdiction of a Bureau of the Department of the Interior, it is the Secretary's consent which is necessary to the leasing of the land. The Bureau's views will be considered carefully. However, where its views are essentially conclusory, it is proper to remand the cases to ascertain the detailed factual basis of such conclusions and whether leasing would be permissible if coupled with appropriate stipulations.

Kent E. Peterson, 30 IBLA 199 (May 20, 1977)

The lessee of an acquired lands oil and gas lease issued after Sept. 2, 1960, which has reached the end of its primary term, must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1970), on or before the regular anniversary date of the lease. Failure to submit the rental timely will result in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1970). Unless the lessee can show that he is entitled to reinstatement of his lease under 30 U.S.C. § 188(c) (1970), the lease must be deemed to have terminated at the end of its stated term.

A petition for reinstatement of an acquired lands oil and gas lease terminated for lack of timely payment of

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

the rental is properly denied where the lessee fails to show reasonable diligence in mailing the payment or a justifiable excuse for the delay in payment. The error of an employee in failing to recognize that rental payment was required for the leases in question does not justify the failure to make a timely payment.

Shell Oil Co., 30 IBLA 290 (June 1, 1977)

Where the United States owns only fractional mineral interest in the land, an offer filed before Sept. 30, 1976, for a simultaneous oil and gas lease drawing, must be rejected where it is not accompanied by a statement showing extent of offeror's ownership of operating rights in fractional mineral interest not owned by the United States.

Bruce T. Cameron, Carol Heller, 31 IBLA 234 (July 12, 1977)

Where the regulation, 43 CFR 3130.4-4 (1975), in effect at the time of filing, required that an oil and gas lease offer for acquired land in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States, a simultaneously filed oil and gas lease offer which is not accompanied by the required statement must be rejected.

Where a regulation requires that an acquired lands oil and gas lease offer be accompanied by a separate statement as to the offeror's ownership of operating rights to the fractional mineral interest not owned by the United States, and the offer is rejected for noncompliance therewith, the offeror's bald assertion that he filed such statement is insufficient to prove such a fact without corroboration. A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

W. J. Langley, 32 IBLA 118 (Sept. 12, 1977)

Where minerals not owned by the United States have been leased for oil and gas purposes under the terms of the Mineral Leasing Act for Acquired Lands, the lease must be canceled because only acquired minerals owned by the United States are subject to leasing under that Act.

Duncan Miller, 32 IBLA 137 (Sept. 12, 1977)

A recommendation by the Bureau of Reclamation that issuing oil and gas leases on acquired land under its administration would jeopardize further acquisitions, should be given careful consideration, but the Bureau of Land Management must independently evaluate whether issuing the leases would be in the public interest.

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

An independent evaluation of whether the issuance of oil and gas leases on acquired lands would be in the public interest need, in some cases, consist only of an examination of the general character of the land. Where, however, the offeror raises material factual questions, these must be considered.

Harris R. Fender, 33 IBLA 216 (Dec. 22, 1977)

ACREAGE LIMITATIONS

The record-title holder of an oil and gas lease or offer is chargeable with the full acreage included in the lease or offer, even though another person, association, or corporation has a 50-percent interest in the lease or offer.

Arjay Oil Co., 30 IBLA 212 (May 20, 1977)

APPLICATIONS

Generally

When a rubber stamp is used to affix a signature to a drawing entry card an no agent's statement has been submitted, a State Office of the Bureau of Land Management may take appropriate action to establish whether the applicant's signature was imprinted by him or at his request by an amanuensis and that he formulated the offer.

Mary E. Niland, Elizabeth E. O'Donnell, 28 IBLA 300 (Jan. 10, 1977)

An oil and gas lease offer made pursuant to the Mineral Leasing Act for Acquired Lands is properly rejected where the subject lands are not acquired lands but, rather, are patented with a reservation of mineral rights in the United States.

John O. Clay, 28 IBLA 353 (Jan. 24, 1977)

An unsigned drawing entry card filed in the simultaneous oil and gas leasing procedures must be rejected.

Melvin C. Hudson, 28 IBLA 359 (Feb. 1, 1977)

An oil and gas lease entry card may be validly signed by the offeror's son where the offeror is an elderly woman who at times is incapable of making her own signature and it is her intention that the son's signing of her name be treated as if it were her own signature.

Rebecca J. Waters, 28 IBLA 381 (Feb. 4, 1977)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

A successful simultaneously filed oil and gas lease entry card is not to be rejected because the card is signed prior to the date of the beginning of the simultaneous filing period unless it is dated more than 10 days prior to the date it is filed.

Kathryn J. Eckles, Harley L. Williamson, 28 IBLA 390 (Feb. 4, 1977)

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest, filed before Sept. 30, 1976, must have been accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which was defective for failure to comply with this mandatory regulation must be rejected where it was filed in the simultaneous drawing procedure.

Duncan Miller, 29 IBLA 1 (Feb. 7, 1977)

Mary Nan Spear, 31 IBLA 386 (Aug. 16, 1977)

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. When an offeror submits, on appeal, a copy of such statement but the date on the statement differs from the date on the card, and the offeror does not allege he filed the statement simultaneously with the offer, such offer must be rejected for failure to comply with a mandatory regulation.

Duncan Miller, 29 IBLA 43 (Feb. 16, 1977)

Where the Bureau of Land Management has determined that lands listed under the simultaneous oil and gas leasing system should not have been listed solely because the lands lie within "a critical watershed which is to be the subject of an Environmental Impact Statement," the first-drawn offer will not be rejected but may remain in suspended state until completion of the EIS and determination at that time whether the lands may be leased subject to stipulations for protection of the watershed.

Adrian Overton, 29 IBLA 66 (Feb. 18, 1977)

Where an applicant fails to date a simultaneous oil and gas drawing entry card, he has not complied with 43 CFR 3112.2-1(a) which requires that the card be "fully executed," and his lease offer is properly rejected.

Thomas V. Gullo & Joseph L. Randazzo, 29 IBLA 126 (Feb. 23, 1977)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

A simultaneous oil and gas lease offer is properly rejected and the filing fee retained where the offeror, in completing the drawing card, does not provide the name of the State in which the parcel of land is located.

Eleanor F. Neuberger, 29 IBLA 168 (Mar. 14, 1977)

Martin M. Sheets, 32 IBLA 7 (Aug. 29, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn with first priority prior to the specified date.

Raymond N. Joeckel, 29 IBLA 170 (Mar. 14, 1977)

Milton J. Lebsack, 29 IBLA 316 (Mar. 30, 1977)

Doris N. Sterkel, Richard L. Sterkel, 30 IBLA 39 (Apr. 12, 1977)

X O Exploration, Inc., 30 IBLA 209 (May 20, 1977)

Francis L. Hill, 32 IBLA 202 (Sept. 16, 1977)

Thomas G. Fails, et al., 32 IBLA 302 (Sept. 30, 1977)

An oil and gas lease offer filed in the name of a corporation is properly rejected where it is not accompanied by corporate qualification papers nor by any reference to a serial number where such information might be found, as required by 43 CFR 3102.4-1.

Dal Metro Investment Co., 29 IBLA 198 (Mar. 22, 1977)

Simultaneous oil and gas drawing entry cards must be fully executed by the applicant and when the applicant omits a State prefix in the parcel number, the lease offer is properly rejected.

Where an applicant fails to include the State prefix of the parcel number on an oil and gas drawing entry card, she has not complied with 43 CFR 3112.2-1(a) which requires that the card be "fully executed" and her offer is properly rejected whether the defect is discovered before or after the drawing.

Etta D. Harris, 29 IBLA 259 (Mar. 25, 1977)

An oil and gas lease offer is properly rejected where the applicant fails to date the simultaneous oil and gas drawing entry card.

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

The drawing of an offer for a noncompetitive lease creates no vested rights in the offeror, the offeror's tender of advance rental payment notwithstanding.

Cissie A. Reinauer, 29 IBLA 295 (Mar. 30, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn with first priority prior to the effective date of the increase.

Raymond N. Joeckel, et al., 30 IBLA 32 (Apr. 11, 1977)

Karen Cotter, et al., 30 IBLA 88 (Apr. 27, 1977)

Duncan Miller, 30 IBLA 90 (Apr. 27, 1977)

William C. Kirkwood, 31 IBLA 178 (July 5, 1977)

Duncan Miller, 31 IBLA 349 (July 22, 1977)

Fred Goodstein, 32 IBLA 25 (Aug. 31, 1977)

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest, filed before Oct. 28, 1976, must have been accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which was defective for failure to comply with this mandatory regulation must be rejected where it was filed in the simultaneous drawing procedure.

Vernon C. Howell, 30 IBLA 70 (Apr. 18, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date.

Jary J. Hunnicutt, et al., 30 IBLA 86 (Apr. 27, 1977)

A delay in the adjudication of an application by officers or employees of the Department cannot create rights in Federal property contrary to law.

Guy W. Franson, 30 IBLA 123 (May 12, 1977)

Simultaneous oil and gas drawing entry cards must be fully executed by the applicant and when the applicant omits a State prefix in the parcel number, the lease offer is properly rejected.

John P. Levycky, 30 IBLA 127 (May 12, 1977)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases to be issued pursuant to the simultaneous filing procedures where the drawing was held prior to the effective date of the rent increase, and leases to be issued for a regular over-the-counter offer where the offer was filed prior to the effective date.

Casey C. Jansen, et al., 30 IBLA 134 (May 12, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases to be issued to successful offerors at simultaneous drawings held prior to the effective date of the rate increase.

Melvin R. Hobgood, 30 IBLA 163 (May 18, 1977)

The signature of the offeror on a simultaneous oil and gas lease offer entry card may be affixed by means of a rubber stamp if it is the intention of the offeror that it be his or her signature.

Use of a rubber-stamped facsimile of an offeror's signature on a simultaneous oil and gas lease entry card invites inquiry into whether the card was stamped by the offeror or, instead, by his agent.

Where a person files an oil and gas lease offer through a leasing service under an arrangement whereby the leasing service advances the first year's rental, selects the land, and controls the address at which the offeror may be reached, but no enforceable agreement is entered into whereby the offeror is obligated to transfer any interest in any lease to be issued to the leasing service, the service is not a party in interest in the offer merely because it may have a hope or expectancy of acquiring an interest, and the offeror is not precluded from stating that he is the sole party in interest in the offer.

D. E. Pack, 30 IBLA 166 (May 19, 1977) 84 I.D. 192

When the Secretary of the Interior has exercised his discretionary authority over the issuance of oil and gas leases to promulgate a Public Land Order closing an area of public lands to oil and gas leasing for the purpose of preserving and developing the potash deposits therein belonging to the United States, it is proper to reject oil and gas lease offers for such withdrawn lands.

AA Minerals Corp., 30 IBLA 259 (May 31, 1977)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Simultaneous oil and gas drawing entry cards must be fully executed by the applicant and when the applicant omits a State prefix in the parcel number, the lease offer is properly rejected.

Where an applicant fails to include the State prefix of the parcel number on an oil and gas drawing entry card, he has not complied with 43 CFR 3112.2-1(a) which requires that the card be "fully executed" and such offer is properly rejected whether the defect is discovered before or after the drawing.

Improper issuance of a noncompetitive oil and gas lease in response to a defective drawing entry card in the simultaneous filing procedure does not foreclose the right of the second drawn applicant whose drawing entry card was complete when filed to a lease for the parcel named; the erroneously issued lease must be canceled, and upon cancellation, the second drawee must be awarded a lease to the parcel, all else being regular.

Gerald L. Christensen, Edward C. Green, 30 IBLA 303 (June 6, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn prior to the effective date of the increase.

Marie A. Fiel, et al., 30 IBLA 308 (June 6, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, even though the lease offers were filed prior to the specified date.

Guy M. Willis, 30 IBLA 344 (June 8, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, the increased rate applies to all leases issued after that date, regardless of the date on which the offer to lease was originally submitted.

Wanda C. and William B. Scheidt, et al., 30 IBLA 346 (June 8, 1977)

William S. Schicktanz, 32 IBLA 20 (Aug. 31, 1977)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate applies to all leases issued after that date, regardless of the date the offer to lease or drawing entry card was filed.

Duncan Miller, 30 IBLA 350 (June 8, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, even though the lease offer was filed prior to the date of the regulation. The imposition of the increased rate is not discriminatory as it applies to all leases issued after a certain date.

Guy M. Willis, 30 IBLA 373 (June 10, 1977)

The filing of a noncompetitive oil and gas lease offer, prior to acceptance, does not create any right to a lease or legal interest which restricts the discretionary authority of the Secretary of the Interior over lease issuance. Thus, an amended regulation raising the lease rental charge may be applied to lease offers which have been previously filed but not accepted and such action is not violative of the Fifth Amendment.

Barbara A. Joeckel, 30 IBLA 376 (June 10, 1977)

Where an oil and gas lease offer is signed by an agent on behalf of the offeror, the regulations with respect to qualifications of lessees require evidence of the authority of the agent and separate statements by the offeror and the agent regarding the nature and extent of any interest the agent has in the lease. The same requirement applies where the offeror's facsimile signature is affixed on the offer by an agent. An offer must be rejected where this information is not filed.

The Bureau of Land Management (BLM) has a responsibility to issue noncompetitive oil and gas leases only to the first-qualified offeror. A rubber-stamped or other form of facsimile signature, unlike a handwritten signature, does not give rise to a presumption that it was personally executed by the offeror. The BLM may inquire of the circumstances under which the signature was stamped on the offer to determine whether compliance with 43 CFR 3102.6-1 was required.

Charlotte L. Thornton, William M. Weaver, Jr., Robert L. Smith, 31 IBLA 3 (June 15, 1977)

An oil and gas lease offer must be rejected as to lands applied for which are held in trust for Indians and are not available under the Mineral Leasing Act. Even though the minerals in these lands have been reserved to the United States, mineral development is not possible at this time because the language of the exchange

OIL AND GAS LEASES--Continued

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act under which the lands were acquired requires further promulgation of special regulations by the Secretary as a condition precedent to such development.

Thomas D. Chace, 31 IBLA 13 (June 17, 1977)

Where the regulation, 43 CFR 3130.4-4 (1975), in effect at the time of filing, required that an oil and gas lease offer for land in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States, a simultaneously filed lease offer which is not accompanied by the required statement must be rejected, and the defect may not be "cured" by submission of the statement at a later time.

David F. Owen, 31 IBLA 24 (June 20, 1977)

The showings required by 43 CFR 3102.4-1 to qualify a corporation to receive an oil and gas lease are mandatory. An oil and gas lease offer by a corporation is properly rejected when it is signed by an officer who is neither authorized to act on behalf of the corporation by the corporate qualification statement on file with the Bureau of Land Management nor authorized to act by a statement accompanying the offer.

As a general rule, an applicant is not entitled to rely upon misinformation or erroneous advice given by departmental employees to acquire any rights in public lands not authorized by law. A corporation filing an oil and gas lease offer, signed by an officer not designated in accordance with 43 CFR 3102.4-1 as authorized to act on its behalf, cannot rely on the fact that the officer's signature was accepted by the Department on documents filed in unrelated matters to excuse its failure to provide the mandatory authorization.

An over-the-counter oil and gas lease offer, properly rejected because it failed to meet the requirements of the regulations, may be considered as having priority as of the date the defect is cured where the curative action was taken during an appeal from the rejection of the offer.

Emerald Oil Co., 31 IBLA 119 (June 24, 1977)

Reproduction of the franked postal drawing entry card is not authorized and offers filed on copies of such form must be rejected. An offer will not be rejected for this reason when an examination of several cards submitted by the same offerors fails to establish that the cards were reproductions.

The signature of the offeror on a simultaneous oil and gas lease offer entry card may be affixed by means of a rubber stamp if it is the intention of the offeror that it be his or her signature.

A BLM office need not presume that an applicant rather than an agent stamped a facsimile signature on a drawing entry card, and where no agent's statement has been submitted as required by 43 CFR 3102.6-1, a Bureau

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office may inquire as to whether the applicant's signature was imprinted at his request and whether he formulated the offer.

Ray H. Thames, 31 IBLA 167 (July 5, 1977)

A first-drawn simultaneous drawing entry card which is filed by a partnership but which is not accompanied by statements required by the pertinent regulation or which does not refer to the file serial number of the record where the statements have previously been filed is defective and must be rejected.

Norcross Partners, 31 IBLA 181 (July 5, 1977)

Persons filing a joint oil and gas lease offer may properly use the address of a leasing service on their entry card.

Since the question of whether offerors for oil and gas leases have addresses other than that indicated on their entry card is irrelevant to the validity of their offer where the address of a leasing service is used on the entry card, the BLM need not attempt to discover whether offerors in fact have addresses other than that shown on their entry card.

Where the use of a facsimile signature on an oil and gas lease offer, considered in conjunction with other circumstances, raises questions concerning offeror's compliance with 43 CFR 3102.6-1(a)(2), it is appropriate to remand the case to the proper BLM office for resolution.

Nadine H. Sanford, 31 IBLA 184 (July 5, 1977)

Lands within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding pursuant to 43 CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where either before or after the filing of the offer, but prior to the issuance of the lease, the land is determined to be within the known geologic structure of a producing oil or gas field.

Curtis Wheeler, 31 IBLA 221 (July 7, 1977)

Where the United States owns only fractional mineral interest in the land, an offer filed before Sept. 30, 1976, for a simultaneous oil and gas lease drawing, must be rejected where it is not accompanied by a statement showing extent of offeror's ownership of operating rights in fractional mineral interest not owned by the United States.

Bruce T. Cameron, Carol Heller, 31 IBLA 234 (July 12, 1977)

OIL AND GAS LEASES--Continued

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Where a protest has been made against the validity of a drawing entry card (DEC) in the simultaneous oil and gas lease filing procedure, it is improper to issue a lease in response to the protested DEC before the protest is finally dismissed. The Board of Land Appeals, rather than a BLM State Office, has the authority to make final administrative determinations for the Department in matters relating to protests against oil and gas lease offers.

D. E. Pack, 31 IBLA 283 (July 22, 1977)

Land included within an outstanding oil and gas lease is not available for leasing and an oil and gas offer filed for such land must be rejected.

Lands within a known geological structure of a producing oil or gas field may only be leased by competitive bidding pursuant to 43 CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected.

Curtis D. Wheeler, 31 IBLA 354 (July 25, 1977)

An oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent.

Duncan Miller, 31 IBLA 371 (Aug. 4, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to over-the-counter filing procedures, even though the lease offers were submitted prior to the effective date of the increase.

Brad J. Hays, 31 IBLA 374 (Aug. 5, 1977)

Cecil C. Wall, 32 IBLA 27 (Aug. 31, 1977)

Where an inquiry by the BLM discloses that oil and gas lease applicants imprinted their own facsimile signatures on their drawing entry cards, there can be no question of the application of 43 CFR 3102.6-1(a)(2) since this regulation operates where an agent or attorney in fact affixes the applicant's signature on the applicant's behalf.

A simultaneously filed oil and gas lease entry card is not to be rejected for the reason that the applicant signed the card and the parcel number was entered thereon subsequently by the applicant's employee, since the applicant, in signing the card, certifies as to all the requirements stated as of the date entered thereon, and agrees to be bound to a lease if the offer is successful.

Evelyn Chambers and Jerry Chambers, 31 IBLA 381 (Aug. 10, 1977)

OIL AND GAS LEASES--Continued

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Generally--Continued

When an individual files an oil and gas lease offer through a leasing service under an agreement where the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein. Such an agreement creates for the leasing service an interest in the lease as that term is defined in 43 CFR 3100.0-5(b).

When a leasing service holds an interest in a lease at the time it files an offer on behalf of an offeror, the offeror is not the sole party in interest and he is required by regulation, 43 CFR 3102.7, to provide the names of other interested parties, the nature and extent of their interest and the nature of the agreement between them not later than 15 days after the filing of the offer. Failure to file the required statements results in rejection of the offer.

Lola I. Doe, 31 IBLA 394 (Aug. 19, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases to be issued for a regular over-the-counter offer where the offer was filed prior to the effective date.

Altex Oil Corp., 32 IBLA 18 (Aug. 31, 1977)

Altex Oil Co., 32 IBLA 44 (Sept. 2, 1977)

Altex Oil Corp., 32 IBLA 390 (Nov. 7, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date pursuant to over-the-counter offers or pursuant to the simultaneous filing procedures, even though the offers or entry cards were filed with BLM prior to the specified date.

An oil and gas lease offer under the Mineral Leasing Act, as amended, 30 U.S.C. § 181 et seq. (1970), does not create a property right in the offeror but is merely a hope or expectation. It is not a "vested right," a present legal or equitable "title," "interest" or "ownership" or "perfected right," to come within the protection of the Fifth or Fourteenth Amendment.

Bureau of Land Management Instruction Memorandum No. 77-37 outlined a general policy for the assessment of additional rental on oil and gas lease offers pending when the rental rate was increased by regulation, but left to the discretion of the State Offices the particular implementing procedures. Procedures used by a State Office which may be different from other State Offices, but which do not prejudice the offerors' right to receive oil and gas leases if leases are issued on the lands applied for, are not arbitrary and capricious

OIL AND GAS LEASES--Continued

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as to require reversal of the decisions assessing additional rental.

D. R. Gaither, et al., 32 IBLA 106 (Sept. 12, 1977)

Where the regulation, 43 CFR 3130.4-4 (1975), in effect at the time of filing, required that an oil and gas lease offer for acquired land in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States, a simultaneously filed oil and gas lease offer which is not accompanied by the required statement must be rejected.

Where a regulation requires that an acquired lands oil and gas lease offer be accompanied by a separate statement as to the offeror's ownership of operating rights to the fractional mineral interest not owned by the United States, and the offer is rejected for noncompliance therewith, the offeror's bald assertion that he filed such statement is insufficient to prove such a fact without corroboration. A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

W. J. Langley, 32 IBLA 118 (Sept. 12, 1977)

A simultaneous oil and gas drawing entry card must be fully executed by the applicants and when they omit their address or the State in which the parcel of land to be leased is located, the lease offer is properly rejected.

Hartley L. Gordon and James A. Lint, 32 IBLA 139 (Sept. 12, 1977)

When an individual files an oil and gas lease offer through a leasing service under an agreement where the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein. Such an agreement creates for the leasing service an interest in the lease as that term is defined in 43 CFR 3100.0-5(b).

When a leasing service holds an interest in a lease at the time it files an offer on behalf of an offeror, the offeror is not the sole party in interest and he is required by regulation, 43 CFR 3102.7, to provide the names of other interested parties, the nature and extent of their interest and the nature of the agreement between them not later than 15 days after the filing of

OIL AND GAS LEASES--Continued

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the offer. Failure to file the required statements results in rejection of the offer.

Sidney H. Schreter, William F. Wopp, Jr., 32 IBLA 148 (Sept. 12, 1977)

A simultaneous oil and gas lease offer is properly rejected where the drawing entry card is not dated.

Thomas C. Moran, 32 IBLA 168 (Sept. 13, 1977)

Where an applicant fails to file five copies of a noncompetitive lease offer as required by the regulations in 43 CFR 3111.1-1(a) the lease offer is properly rejected. Failure to submit the required number of copies is not included in the list of curable defects in 43 CFR 3111.1-1(e) and, therefore, is fatal to the oil and gas offer.

John P. Errebo, Jr., 32 IBLA 191 (Sept. 15, 1977)

Where a drawing entry card sets out the names of two applicants but one applicant fails to sign the card, the card is not in compliance with 43 CFR 3112.2-1(a) which requires that the card be "fully executed," and the lease offer is properly rejected.

Fernando C. Santos, 32 IBLA 194 (Sept. 15, 1977)

The filing of an application for a noncompetitive oil and gas lease, prior to acceptance, does not create a right to a lease immune from application of a subsequently amended administrative regulation. An increased rental rate is properly applied to an oil and gas lease offer pending before the effective date of the rate change but which has not been accepted prior to that time.

Viola J. Kirkwood, 32 IBLA 199 (Sept. 16, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, even though the lease offers were filed prior to the specified date. The filing of an application for a lease prior to its acceptance does not create a right to a lease which is immune from application of a subsequently amended administrative regulation, nor does administrative delay in the processing of the lease offer preclude proper application of such regulation.

Paul C. Kohlman, 32 IBLA 240 (Sept. 21, 1977)

OIL AND GAS LEASES--Continued

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A simultaneous oil and gas lease offer is properly rejected if it is unsigned or undated.

When a first-drawn oil and gas lease offer is disqualified because it is unsigned or undated, the Department's equitable adjudication authority may not be invoked to divest the first-qualified drawee of his preference right to a lease.

David L. Hansen, John B. Hurdle, John F. and Inez R. Cramer, 32 IBLA 272 (Sept. 27, 1977)

Increased per acre rental, as directed under Jan. 5, 1977, revision of 43 CFR 3103.3-2(a), is applicable to all noncompetitive oil and gas leases issued after Feb. 1, 1977, including leases for which offers, both simultaneous and over-the-counter, were filed prior to revision of the regulation.

Duncan Miller, et al., 32 IBLA 289 (Sept. 27, 1977)

Where a check has been submitted with a drawing entry card in payment of the $10 filing fee for a simultaneous oil and gas lease offer, and the check is dishonored by the bank, the offeror loses his priority unless the refusal to honor the check was the result of a bank error, corroborated by the bank.

John Eldon Dean, 32 IBLA 336 (Oct. 18, 1977)

Jonathan T. Ames, 33 IBLA 1 (Nov. 14, 1977)

Where an oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure contains the name of additional parties and the statements of interest, copy or explanation of the agreement among the parties, and evidence of the qualifications of the additional parties are not filed within the time required by 43 CFR 3102.7, the offer must be rejected.

Verner F. Sorenson, 32 IBLA 341 (Oct. 21, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn with first priority prior to the effective date of the increase.

Where the Bureau of Land Management issued a decision notifying a successful lease offeror of the increased advanced rental rate from $.50 to $1 per acre as per the regulation change in 43 CFR 3103.3-2, effective Feb. 1, 1977, and no right of appeal was granted from that decision, the offeror was not bound to appeal from that decision in order to preserve his priority status. When the offeror took an appeal from a subsequent decision rejecting the offer, that appeal suspended the effect of both BLM decisions pending the result of the

OIL AND GAS LEASES--Continued

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appeal before this Board and upon our affirmation, appellant now will be given 15 days to comply with the original requirements before his offer is rejected.

Paul Landis, 32 IBLA 374 (Oct. 31, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to an over-the-counter offer filed prior to the specified date.

Dean W. Rowell, 33 IBLA 30 (Nov. 22, 1977)

An unsigned and undated drawing entry card filed in the simultaneous oil and gas leasing procedures must be rejected.

Milo W. Snider, 33 IBLA 42 (Nov. 25, 1977)

Where the Bureau of Land Management issued a decision notifying a successful drawee in the simultaneous oil and gas filing program of the increased advance rental rate from 50 cents to $1 per acre pursuant to a regulation change effective Feb. 1, 1977, 43 CFR 3103.3-2, and no right of appeal was granted from that decision, the offeror was not bound to appeal from that decision in order to preserve his priority status. When the offeror took an appeal from a subsequent decision rejecting the offer, that appeal suspended the effect of both BLM decisions pending the result of the appeal before this Board. Payment of the required increased rental during the appeal period is deemed timely and a lease may issue.

George Gabriel, 33 IBLA 44 (Nov. 25, 1977)

Where an applicant incorrectly uses the wrong abbreviation for the State prefix of the parcel number on an oil and gas drawing entry card, she has not complied with 43 CFR 3112.2-1(a) which requires that the card be "fully executed" and her offer is properly rejected.

Marcia P. Lane, 33 IBLA 68 (Dec. 5, 1977)

The Secretary of the Interior may in his discretion reject any offer to lease public lands for oil and gas upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the Mineral Leasing Act. Where part of the lands applied for are in the Bonneville Salt Flats, and the Bureau of Land Management determines that oil and gas leasing activities are not compatible with the primary management

OIL AND GAS LEASES--Continued

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objective to prevent irreparable damage to a significant resource, rejection of the lease offers or the requirement of execution of surface occupancy stipulations will be affirmed.

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, the increased rate applies to all leases issued after that date, regardless of the date on which the offer to lease was originally submitted.

Vern K. Jones, et al., Esdras K. Hartley, 33 IBLA 74 (Dec. 6, 1977)

An unsigned and undated drawing entry card filed in the simultaneous oil and gas leasing procedures must be rejected, despite assertions of excusable neglect or inadvertence.

Edna M. McCree and Harry R. McCree, 33 IBLA 235 (Dec. 28, 1977)

Amendments

A deficient over-the-counter oil and gas lease offer may be cured by the offeror's submission of corrective information prior to a final departmental decision, but only with priority of filing as of the date the corrective information was filed.

C. C. Hughes, 33 IBLA 237 (Dec. 28, 1977)

Attorneys-in-Fact or Agents

When a rubber stamp is used to affix a signature to a drawing entry card an no agent's statement has been submitted, a State Office of the Bureau of Land Management may take appropriate action to establish whether the applicant's signature was imprinted by him or at his request by an amanuensis and that he formulated the offer.

Mary E. Niland, Elizabeth E. O'Donnell, 28 IBLA 300 (Jan. 10, 1977)

"Agent." The word "agent," as used in 43 CFR 3102.6-1 requiring statements of authority and disclosure of interests in oil and gas lease offers by agents, does not include a son who has no discretionary authority and merely acts as his mother's amanuensis in affixing her signature on a simultaneous oil and gas lease offer entry card. Therefore, no further statement is required by the Bureau of Land Management to establish whether or not the son was an agent within the meaning of 43 CFR 3102.6-1.

Rebecca J. Waters, 28 IBLA 381 (Feb. 4, 1977)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

Use of a rubber-stamped facsimile of an offeror's signature on a simultaneous oil and gas lease entry card invites inquiry into whether the card was stamped by the offeror or, instead, by his agent.

Where an agent of an offeror for a simultaneous oil and gas lease signs the entry card by affixing a rubber-stamped facsimile of the offeror's signature, the requirements of 43 CFR 3102.6-1 apply and separate statements of interest by both offeror and the agent must be filed, or the offer will be rejected.

"Agent." The word "agent," as used in 43 CFR 3102.6-1, requiring statements of authority and disclosure of interests in oil and gas leases by agents, includes all persons or companies having discretionary authority to act on the offeror's behalf concerning the offer or lease.

D. E. Pack, 30 IBLA 166 (May 19, 1977) 84 I.D. 192

Where an oil and gas lease offer is signed by an agent on behalf of the offeror, the regulations with respect to qualifications of lessees require evidence of the authority of the agent and separate statements by the offeror and the agent regarding the nature and extent of any interest the agent has in the lease. The same requirement applies where the offeror's facsimile signature is affixed on the offer by an agent. An offer must be rejected where this information is not filed.

The Bureau of Land Management (BLM) has a responsibility to issue noncompetitive oil and gas leases only to the first-qualified offeror. A rubber-stamped or other form of facsimile signature, unlike a handwritten signature, does not give rise to a presumption that it was personally executed by the offeror. The BLM may inquire of the circumstances under which the signature was stamped on the offer to determine whether compliance with 43 CFR 3102.6-1 was required.

Where the facsimile signature on an oil and gas lease offer is not affixed to the offer by the offeror himself, the circumstances under which the signature is imprinted by a third party are determinative of whether he was acting as an agent. It becomes important to know who actually formulated the offer--whether the offeror knew that he was applying for a lease of the specific lands described in the offer.

Charlotte L. Thornton, William M. Weaver, Jr., Robert L. Smith, 31 IBLA 3 (June 15, 1977)

A BLM office need not presume that an applicant rather than an agent stamped a facsimile signature on a drawing entry card, and where no agent's statement has been submitted as required by 43 CFR 3102.6-1, a Bureau office may inquire as to whether the applicant's signature was imprinted at his request and whether he formulated the offer.

Where an agent of an offeror for a simultaneous oil and gas lease signs the entry card by affixing a rubber-stamped or other facsimile of the offeror's signature, the requirements of 43 CFR 3102.6-1 apply, and separate

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

statements of interest by both offeror and the agent must be filed, or the offer will be rejected.

Ray H. Thames, 31 IBLA 167 (July 5, 1977)

Where an inquiry by the BLM discloses that oil and gas lease applicants imprinted their own facsimile signatures on their drawing entry cards, there can be no question of the application of 43 CFR 3102.6-1(a)(2) since this regulation operates where an agent or attorney in fact affixes the applicant's signature on the applicant's behalf.

Evelyn Chambers and Jerry Chambers, 31 IBLA 381 (Aug. 10, 1977)

An oil and gas lease offer signed by an attorney-in-fact for the offeror is properly rejected where it is not accompanied by a separate statement of the attorney's interest or lack of interest in the offer and the lease, if issued, as required by departmental regulation.

Mitchell Energy Corp., 32 IBLA 244 (Sept. 21, 1977)

Description

An oil and gas lease offer will not be rejected on the basis of a defective land description merely because some of the land applied for is not available for leasing where the offeror has submitted advance rental for all of the land described. Generally, where an offer describes an entire section and only part of that land is available for leasing, a lease will be issued for the land available and the offer rejected for the balance of the land in the section.

The description of an entire section of land modified by the word "available" in an oil and gas lease application is an offer to lease all of that section, subject to availability for leasing. An offer containing such a description need not be rejected for lack of a legally sufficient description where the offer is accompanied by the required rent for all of the land described therein.

Milan S. Papulak, 30 IBLA 77 (Apr. 18, 1977)

Where there is no ambiguity or confusion in the description of lands in an oil and gas lease offer because it includes a complete description of land in a section in a particular township by legal subdivisions embracing unnumbered survey lots or fractional subdivisions, as well as a description of unnumbered lots in accord with current survey numbering practice, the lot designation may be disregarded, and the regulatory requirement that lands in an oil and gas lease offer which have been surveyed under the public land rectangular system must be described by legal subdivision, section, township, and range, is satisfied, even

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Description--Continued

though the official plat of survey does not designate or number the fractional subdivisions as lots.

David H. Yates, 33 IBLA 175 (Dec. 20, 1977)

BLM is not required to alter, modify, or correct an over-the-counter oil and gas lease offer in order to resolve a disparity in the land description contained therein.

C. C. Hughes, 33 IBLA 237 (Dec. 28, 1977)

Drawings

When a rubber stamp is used to affix a signature to a drawing entry card an no agent's statement has been submitted, a State Office of the Bureau of Land Management may take appropriate action to establish whether the applicant's signature was imprinted by him or at his request by an amanuensis and that he formulated the offer.

Mary E. Niland, Elizabeth E. O'Donnell, 28 IBLA 300 (Jan. 10, 1977)

Regardless of whether offeror is described as "unqualified" or "disqualified," 43 CFR 3112.5-1 requires that upon successful drawees' failure to pay first year's rental, the lands shall be listed subsequently under the simultaneous drawing procedure rather than leased under the regular over-the-counter procedure in 43 CFR Subpart 3111.

Robert G. Lynn, 28 IBLA 310 (Jan. 14, 1977)

Where, after a drawing of simultaneously filed oil and gas lease offers, the authorized officer mails a notice to the successful drawee informing him of his priority and the requirement that the advance rental must be paid within the allotted time, which letter is received at his address of record, his subsequent failure to remit the rental timely will disqualify his offer even though he asserts that the person who received and signed for the notice, and then failed to give it to him promptly, was not his designated agent for receipt of mail.

After a drawing of simultaneously filed oil and gas lease offers the requirement that the first year's rental be received in the proper office within the allotted time after notice to the applicant is mandatory, and consideration of excuses for failure to comply is not permitted. Specifically, no relief will be afforded where the delay is attributed to the Postal Service.

Edgar C. Bennington (On Reconsideration), 28 IBLA 355 (Jan. 31, 1977)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

An unsigned drawing entry card filed in the simultaneous oil and gas leasing procedures must be rejected.

Melvin C. Hudson, 28 IBLA 359 (Feb. 1, 1977)

"Agent." The word "agent," as used in 43 CFR 3102.6-1 requiring statements of authority and disclosure of interests in oil and gas lease offers by agents, does not include a son who has no discretionary authority and merely acts as his mother's amanuensis in affixing her signature on a simultaneous oil and gas lease offer entry card. Therefore, no further statement is required by the Bureau of Land Management to establish whether or not the son was an agent within the meaning of 43 CFR 3102.6-1.

Rebecca J. Waters, 28 IBLA 381 (Feb. 4, 1977)

A successful simultaneously filed oil and gas lease entry card is not to be rejected because the card is signed prior to the date of the beginning of the simultaneous filing period unless it is dated more than 10 days prior to the date it is filed.

Kathryn J. Eckles, Harley L. Williamson, 28 IBLA 390 (Feb. 4, 1977)

Where an applicant fails to date a simultaneous oil and gas drawing entry card, he has not complied with 43 CFR 3112.2-1(a) which requires that the card be "fully executed," and his lease offer is properly rejected.

Thomas V. Gullo & Joseph L. Randazzo, 29 IBLA 126 (Feb. 23, 1977)

A simultaneous oil and gas lease offer is properly rejected when the offeror fails to execute fully the drawing entry card by not indentifying on the card the full designation of the parcel by both number and letter prefix.

E. Fenton Carey, 29 IBLA 196 (Mar. 21, 1977)

An offer for an oil and gas lease filed on a simultaneous drawing entry card must be rejected when the offeror has failed to indicate the date he signed the card.

Earl Thompson, 29 IBLA 218 (Mar. 22, 1977)

The fact that the addresses of the lease offeree and a filing service are identical merely indicates the use of a filing service and does not in itself give the offeror or agent a greater probability of successfully obtaining a lease or interest therein in violation of 43 CFR 3112.5-2.

The burden is on the protestant to prove by competent evidence an accusation that a filing service is filing

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

offers on behalf of more than one offeror and that there is an enforceable agreement the filing service will participate in the proceeds of the lease. A mere offer to buy leases from a successful drawee does not violate the regulation prohibiting anyone from having a greater probability of success in a drawing or constitute an agreement giving an agent or broker an interest in the proceeds of a lease.

Harry L. Matthews, 29 IBLA 240 (Mar. 25, 1977)

Simultaneous oil and gas drawing entry cards must be fully executed by the applicant and when the applicant omits a State prefix in the parcel number, the lease offer is properly rejected.

Where an applicant fails to include the State prefix of the parcel number on an oil and gas drawing entry card, she has not complied with 43 CFR 3112.2-1(a) which requires that the card be "fully executed" and her offer is properly rejected whether the defect is discovered before or after the drawing.

Etta D. Harris, 29 IBLA 259 (Mar. 25, 1977)

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease on an offer drawn with the first priority at a simultaneous drawing when she fails to pay the first year's rental within 15 days of receipt of the notice that such payment is due.

Where an offer is drawn with first priority in a simultaneous drawing, and the offeror fails to pay the first year's rental timely, her failure to do so cannot be excused because of the asserted delay of the Postal Service.

Carma M. Pooley, 29 IBLA 304 (Mar. 30, 1977)

Neither the filing of an over-the-counter oil and gas lease offer, nor the holding of a drawing of simultaneously filed offers to determine the first-qualified offeror, creates any right to a lease or any property rights in the offeror that diminish the Secretary's discretion whether or not to issue a noncompetitive oil and gas lease on a given tract.

James W. Canon, et al., 1 SEC. 1 (Apr. 15, 1977)
84 I.D. 176

A first-drawn simultaneous drawing entry card which is defective because of noncompliance with a mandatory regulation must be rejected and may not be "cured" by submission of further information.

Vernon C. Howell, 30 IBLA 70 (Apr. 18, 1977)

Mitchell Energy Corp., 32 IBLA 244 (Sept. 21, 1977)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

Except for establishing priority of filing, the drawing of an offer for a noncompetitive oil and gas lease creates no vested rights in the offeror. If subsequent to the filing of a noncompetitive oil and gas lease offer and prior to issuance of a lease the land described therein is determined to be in a known geological structure of a producing oil or gas field, the noncompetitive lease offer must be rejected.

Guy W. Franson, 30 IBLA 123 (May 12, 1977)

Simultaneous oil and gas drawing entry cards must be fully executed by the applicant and when the applicant omits a State prefix in the parcel number, the lease offer is properly rejected.

John P. Levycky, 30 IBLA 127 (May 12, 1977)

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease on an offer drawn with the first priority at a simultaneous drawing when he fails to pay the first year's rental within 15 days (or the first business day thereafter) of receipt of the notice that such payment is due.

Where an offer is drawn with first priority in a simultaneous drawing, and the offeror fails to pay the first year's rental timely, his failure to do so cannot be excused because of the asserted delay in the postal service.

Jack Koegel, 30 IBLA 143 (May 12, 1977)

Where an agent of an offeror for a simultaneous oil and gas lease signs the entry card by affixing a rubber-stamped facsimile of the offeror's signature, the requirements of 43 CFR 3102.6-1 apply and separate statements of interest by both offeror and the agent must be filed, or the offer will be rejected.

"Agent." The word "agent," as used in 43 CFR 3102.6-1, requiring statements of authority and disclosure of interests in oil and gas leases by agents, includes all persons or companies having discretionary authority to act on the offeror's behalf concerning the offer or lease.

D. E. Pack, 30 IBLA 166 (May 19, 1977) 84 I.D. 192

The presence in a drawing of simultaneously filed noncompetitive oil and gas lease offers of several entry cards signed by different offerors bearing the common mailing address of a leasing service which has an agreement to pay the first year rental for the account of any successful offeror utilizing its services does not, in the absence of an enforceable agreement under which the offeror is obligated to transfer any interest in any lease to be issued to the leasing service, establish an interest of the leasing service in the

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

various lease offers constituting an improper multiple filing.

D. F. Pack, 30 IBLA 230 (May 26, 1977)

In the absence of any irregularity connected with an offer, an oil and gas lease may be issued to an applicant who has stated that he personally stamped the drawing entry card with his facsimile signature.

Louis J. Boland, 30 IBLA 237 (May 27, 1977)

A simultaneous oil and gas lease offer is not fully executed and is properly rejected when the offeror fails to provide the full designation of the parcel by both number and letter prefix.

Ernest T. Squires, Teresita C. Squires, 30 IBLA 288 (June 1, 1977)

Simultaneous oil and gas drawing entry cards must be fully executed by the applicant and when the applicant omits a State prefix in the parcel number, the lease offer is properly rejected.

Where an applicant fails to include the State prefix of the parcel number on an oil and gas drawing entry card, he has not complied with 43 CFR 3112.2-1(a) which requires that the card be "fully executed" and such offer is properly rejected whether the defect is discovered before or after the drawing.

Gerald L. Christensen, Edward C. Green, 30 IBLA 303 (June 6, 1977)

Where an oil and gas lease offer is signed by an agent on behalf of the offeror, the regulations with respect to qualifications of lessees require evidence of the authority of the agent and separate statements by the offeror and the agent regarding the nature and extent of any interest the agent has in the lease. The same requirement applies where the offeror's facsimile signature is affixed on the offer by an agent. An offer must be rejected where this information is not filed.

The Bureau of Land Management (BLM) has a responsibility to issue noncompetitive oil and gas leases only to the first-qualified offeror. A rubber-stamped or other form of facsimile signature, unlike a handwritten signature, does not give rise to a presumption that it was personally executed by the offeror. The BLM may inquire of the circumstances under which the signature was stamped on the offer to determine whether compliance with 43 CFR 3102.6-1 was required.

Charlotte L. Thornton, William M. Weaver, Jr., Robert L. Smith, 31 IBLA 3 (June 15, 1977)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

Where an oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure contains the name of an additional party in interest and the statement of interest, copy or explanation of the agreement between the parties, and evidence of the qualifications of the additional party are not filed within the time required by 43 CFR 3102.7, the offer must be rejected.

Michael J. Radigan, Robert K. Raines, 31 IBLA 58 (June 23, 1977)

Reproduction of the franked postal drawing entry card is not authorized and offers filed on copies of such form must be rejected. An offer will not be rejected for this reason when an examination of several cards submitted by the same offerors fails to establish that the cards were reproductions.

Where an agent of an offeror for a simultaneous oil and gas lease signs the entry card by affixing a rubber-stamped or other facsimile of the offeror's signature, the requirements of 43 CFR 3102.6-1 apply, and separate statements of interest by both offeror and the agent must be filed, or the offer will be rejected.

Ray H. Thames, 31 IBLA 167 (July 5, 1977)

A first-drawn simultaneous drawing entry card which is filed by a partnership but which is not accompanied by statements required by the pertinent regulation or which does not refer to the file serial number of the record where the statements have previously been filed is defective and must be rejected.

Norcross Partners, 31 IBLA 181 (July 5, 1977)

A simultaneous drawing entry card which is filed with one name in the proper box for the name of the first offeror and a second name (that of offeror's husband) appears in the area below the space provided for the name of the second offeror as part of the first offeror's address and which is signed on the reverse by only the offeror is not prima facie defective and is not to be rejected as not "signed and fully executed," where the second name is not in proper order, is not supported by a social security number and the offeror and her husband state that he had no interest in the offer and that his name appeared on the address stamp which offeror used to place her address on the drawing entry card.

Bessie B. Landis, 31 IBLA 195 (July 6, 1977)

43 CFR Subpart 3112 renders invalid an over-the-counter oil and gas lease offer filed for lands in canceled or relinquished leases or leases which have terminated by operation of law, for such lands are subject to simultaneous offers only.

Robert S. Bickel, 31 IBLA 201 (July 6, 1977)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

A simultaneous oil and gas offeror is properly disqualified under 43 CFR 3112.4-1 from receiving lease when she fails to pay the first year's rental within 15 days of receipt of the notice that such payment is due.

Where the check submitted in payment of the first year's rental for an oil and gas lease offer is dishonored by the drawee bank due to error on the part of the drawer, the offer is properly rejected in accordance with 43 CFR 3112.4-1.

Karen L. Brown, 31 IBLA 239 (July 12, 1977)

The fact that the addresses of the lease offeror and a filing service are identical merely indicates the use of a filing service and does not in itself give the offeror or agent a greater probability of successfully obtaining a lease or interest therein in violation of 43 CFR 3112.5-2.

D. E. Pack, 31 IBLA 283 (July 22, 1977)

A simultaneously filed oil and gas lease entry card is not to be rejected for the reason that the applicant signed the card and the parcel number was entered thereon subsequently by the applicant's employee, since the applicant, in signing the card, certifies as to all the requirements stated as of the date entered thereon, and agrees to be bound to a lease if the offer is successful.

Evelyn Chambers and Jerry Chambers, 31 IBLA 381 (Aug. 10, 1977)

A simultaneous oil and gas lease offer is properly rejected and the filing fee retained where the offeror, in completing the drawing card, does not provide the name of the State in which the parcel of land is located.

Martin M. Sheets, 32 IBLA 7 (Aug. 29, 1977)

A simultaneous oil and gas drawing entry card must be fully executed by the applicants and when they omit their address or the State in which the parcel of land to be leased is located, the lease offer is properly rejected.

Hartley L. Gordon and James A. Lint, 32 IBLA 139 (Sept. 12, 1977)

A simultaneous oil and gas lease offer is properly rejected where the drawing entry card is not dated.

Thomas C. Moran, 32 IBLA 168 (Sept. 13, 1977)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

Where a drawing entry card sets out the names of two applicants but one applicant fails to sign the card, the card is not in compliance with 43 CFR 3112.2-1(a) which requires that the card be "fully executed," and the lease offer is properly rejected.

Fernando C. Santos, 32 IBLA 194 (Sept. 15, 1977)

A simultaneous oil and gas lease offer is properly rejected if it is unsigned or undated.

A signature on a drawing entry card cannot be imputed from a signature on another document.

When a first-drawn oil and gas lease offer is disqualified because it is unsigned or undated, the Department's equitable adjudication authority may not be invoked to divest the first-qualified drawee of his preference right to a lease.

One whose first-drawn oil and gas lease offer is disqualified because it is unsigned or undated cannot establish a right to a lease by showing that his failure to sign or date the card resulted from inadvertence, lack of knowledge, illness or other physical incapacity.

David L. Hansen, John B. Hurdle, John F. and Inez R. Cramer, 32 IBLA 272 (Sept. 27, 1977)

Where a check has been submitted with a drawing entry card in payment of the $10 filing fee for a simultaneous oil and gas lease offer, and the check is dishonored by the bank, the offeror loses his priority unless the refusal to honor the check was the result of a bank error, corroborated by the bank.

John Eldon Dean, 32 IBLA 336 (Oct. 18, 1977)

Jonathan T. Ames, 33 IBLA 1 (Nov. 14, 1977)

If a noncompetitive oil and gas lease is issued for a particular parcel of land, it must be issued to the first-qualified applicant. Under the simultaneous drawing procedures, a defective entry card must be rejected.

Failure to complete properly any information required on a simultaneous oil and gas lease drawing entry card renders the card defective and requires rejection of the offer based upon the mandatory requirements in 43 CFR 3112.2-1(a) that the card be "signed and fully executed." This requirement is strictly applied, and the omission of the day of the month from the date on the card renders the card defective.

Walter M. Sorensen, 32 IBLA 345 (Oct. 21, 1977)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

An unsigned and undated drawing entry card filed in the simultaneous oil and gas leasing procedures must be rejected.

Milo W. Snider, 33 IBLA 42 (Nov. 25, 1977)

Where an applicant incorrectly uses the wrong abbreviation for the State prefix of the parcel number on an oil and gas drawing entry card, she has not complied with 43 CFR 3112.2-1(a) which requires that the card be "fully executed" and her offer is properly rejected.

Marcia P. Lane, 33 IBLA 68 (Dec. 5, 1977)

A simultaneous oil and gas lease offer is properly rejected where the applicant fails to provide the exact date the offer was signed by omitting the year.

Violet Kern, 33 IBLA 150 (Dec. 19, 1977)

A simultaneous oil and gas entry card must be signed and fully executed by the applicant. A decision rejecting such an offer will be upheld where failure to complete the date on the card renders the applicant's certification as to qualifications ineffective and causes the entry card to be incomplete.

Tina A. Regan, 33 IBLA 213 (Dec. 21, 1977)

An unsigned and undated drawing entry card filed in the simultaneous oil and gas leasing procedures must be rejected, despite assertions of excusable neglect or inadvertence.

Edna M. McCree and Harry R. McCree, 33 IBLA 235 (Dec. 28, 1977)

Filing

Appellant's submission with simultaneous oil and gas lease offer of a personal check to cover filing fees satisfied 43 CFR 3112.2-1(a)(1) despite drawee bank's subseguent refusal to honor that check, since the refusal is shown by evidence to be error on part of bank alone.

Hugh Burnett, 28 IBLA 303 (Jan. 10, 1977)

Regardless of whether offeror is described as "unqualified" or "disqualified," 43 CFR 3112.5-1 reguires that upon successful drawees' failure to pay first year's rental, the lands shall be listed subsequently under the simultaneous drawing procedure rather than leased under the regular over-the-counter procedure in 43 CFR Subpart 3111.

Robert G. Lynn, 28 IBLA 310 (Jan. 14, 1977)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

A pending noncompetitive oil and gas lease offer is not a valid existing right protected by the savings clause in the Alaska Native Claims Settlement Act.

James W. Canon, et al., 1 SEC. 1 (Apr. 15, 1977) 84 I.D. 176

Where an applicant fails to file five copies of a noncompetitive lease offer as required by the regulations in 43 CFR 3111.1-1(a) the lease offer is properly rejected. Failure to submit the required number of copies is not included in the list of curable defects in 43 CFR 3111.1-1(e) and, therefore, is fatal to the oil and gas offer.

John P. Errebo, Jr., 32 IBLA 191 (Sept. 15, 1977)

Where a check has been submitted with a drawing entry card in payment of the $10 filing fee for a simultaneous oil and gas lease offer, and the check is dishonored by the bank, the offeror loses his priority unless the refusal to honor the check was the result of a bank error, corroborated by the bank.

John Eldon Dean, 32 IBLA 336 (Oct. 18, 1977)

Jonathan T. Ames, 33 IBLA 1 (Nov. 14, 1977)

Sole Party in Interest

An oil and gas lease offer filed on a simultaneous filing drawing entry card must be rejected if it contains the names of additional parties in interest and, within 15 days of the filing, the offeror fails to submit a statement of his interest and a copy of agreements between him and the other offerors.

Mildred A. Moss, et al., 28 IBLA 364 (Feb. 3, 1977)

Where a person files an oil and gas lease offer through a leasing service under an arrangement whereby the leasing service advances the first year's rental, selects the land, and controls the address at which the offeror may be reached, but no enforceable agreement is entered into whereby the offeror is obligated to transfer any interest in any lease to be issued to the leasing service, the service is not a party in interest in the offer merely because it may have a hope or expectancy of acquiring an interest, and the offeror is not precluded from stating that he is the sole party in interest in the offer.

D. E. Pack, 30 IBLA 166 (May 19, 1977) 84 I.D. 192

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

The presence in a drawing of simultaneously filed noncompetitive oil and gas lease offers of several entry cards signed by different offerors bearing the common mailing address of a leasing service which has an agreement to pay the first year rental for the account of any successful offeror utilizing its services does not, in the absence of an enforceable agreement under which the offeror is obligated to transfer any interest in any lease to be issued to the leasing service, establish an interest of the leasing service in the various lease offers constituting an improper multiple filing.

D. E. Pack, 30 IBLA 230 (May 26, 1977)

Where an oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure contains the name of an additional party in interest and the statement of interest, copy or explanation of the agreement between the parties, and evidence of the qualifications of the additional party are not filed within the time required by 43 CFR 3102.7, the offer must be rejected.

Michael J. Radigan, Robert K. Raines, 31 IBLA 58 (June 23, 1977)

A protest by a junior offeror against oil and gas lease offers which charges that fraudulent statements were made on the offers and implies other wrongdoing that violates the regulation requiring disclosure of all parties in interest is properly dismissed where the protestant fails to establish these charges or that the successful offers were in fact defective. A suggestion of the possibility of a violation of a regulation is not sufficient; a protestant must present competent proof of such violation, absent which a protest is properly rejected.

Arjay Oil Co., 31 IBLA 300 (July 22, 1977)

When an individual files an oil and gas lease offer through a leasing service under an agreement where the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein. Such an agreement creates for the leasing service an interest in the lease as that term is defined in 43 CFR 3100.0-5(b).

When a leasing service holds an interest in a lease at the time it files an offer on behalf of an offeror, the offeror is not the sole party in interest and he is required by regulation, 43 CFR 3102.7, to provide the names of other interested parties, the nature and extent of their interest and the nature of the agreement between them not later than 15 days after the filing

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

of the offer. Failure to file the required statements results in rejection of the offer.

Lola I. Doe, 31 IBLA 394 (Aug. 19, 1977)

When an individual files an oil and gas lease offer through a leasing service under an agreement where the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein. Such an agreement creates for the leasing service an interest in the lease as that term is defined in 43 CFR 3100.0-5(b).

When a leasing service holds an interest in a lease at the time it files an offer on behalf of an offeror, the offeror is not the sole party in interest and he is required by regulation, 43 CFR 3102.7, to provide the names of other interested parties, the nature and extent of their interest and the nature of the agreement between them not later than 15 days after the filing of the offer. Failure to file the required statements results in rejection of the offer.

Sidney H. Schreter, William F. Wopp, Jr., 32 IBLA 148 (Sept. 12, 1977)

An oil and gas lease offer signed by an attorney-in-fact for the offeror is properly rejected where it is not accompanied by a separate statement of the attorney's interest or lack of interest in the offer and the lease, if issued, as required by departmental regulation.

Mitchell Energy Corp., 32 IBLA 244 (Sept. 21, 1977)

Where an oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure contains the name of additional parties and the statements of interest, copy or explanation of the agreement among the parties, and evidence of the qualifications of the additional parties are not filed within the time required by 43 CFR 3102.7, the offer must be rejected.

Verner F. Sorenson, 32 IBLA 341 (Oct. 21, 1977)

A protest by a junior offeror against oil and gas lease offers which charges that fraudulent statements were made on the offers and implies other wrongdoing that violates the regulations requiring disclosure of all parties in interest is properly dismissed where the protestant fails to establish these charges or that the successful offers were in fact defective. A suggestion of the possibility of a violation of a regulation is not sufficient; a protestant must present competent

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

proof of such violation, absent which a protest is properly rejected.

Arjay Oil Co., 33 IBLA 102 (Dec. 16, 1977)

ASSIGNMENTS OR TRANSFERS

When an oil and gas lease is in royalty status and acreage containing the well is segregated into a new lease by approval of an assignment, the nonproductive base lease does not terminate for failure to pay rental timely if the Bureau of Land Management does not inform the lessee of the segregation until after the anniversary date of the lease.

Odessa Natural Corp., 30 IBLA 28 (Apr. 11, 1977)

The oil and gas lessee of record is responsible for paying rental timely and for meeting the reinstatement requirements. The fact that a lessee attempts to assign his lease does not absolve him of the rental and reinstatement requirements until the assignment is approved by the Bureau of Land Management.

Leonard A. J. Tancredi, 32 IBLA 325 (Oct. 11, 1977)

BONDS

Cancellation of an oil and gas lease pursuant to statute, 30 U.S.C. § 188(b) (1970), and the regulation promulgated thereunder is discretionary and not mandatory. An oil and gas lease need not be canceled because of the failure of the lessee to file a structure bond required by regulation, 43 CFR 3104.1(b), where there are extenuating circumstances and where there is no impairment of the rights of third parties and no adverse impact on the interest of the United States.

Howard S. Bugbee, 29 IBLA 30 (Feb. 8, 1977)

CANCELLATION

"Cancellation" and "termination." The "cancellation" and the "termination" of oil and gas leases are separate, distinct concepts. Cancellation reguires a specific act by the Department authorized by various statutes. Termination under 30 U.S.C. § 188(b) (1970) is automatic, occurring by operation of law when the lessee fails to pay his rental timely.

Oil Resources, Inc., 28 IBLA 394 (Feb. 7, 1977)
84 I.D. 91

Cancellation of an oil and gas lease pursuant to statute, 30 U.S.C. § 188(b) (1970), and the regulation promulgated thereunder is discretionary and not mandatory. An oil and gas lease need not be canceled because of the failure of the lessee to file a structure bond required by regulation, 43 CFR 3104.1(b), where there are

OIL AND GAS LEASES--Continued

CANCELLATION--Continued

extenuating circumstances and where there is no impairment of the rights of third parties and no adverse impact on the interest of the United States.

Howard S. Bugbee, 29 IBLA 30 (Feb. 8, 1977)

Improper issuance of a noncompetitive oil and gas lease in response to a defective drawing entry card in the simultaneous filing procedure does not foreclose the right of the second drawn applicant whose drawing entry card was complete when filed to a lease for the parcel named. The erroneously issued lease must be canceled, and upon cancellation, the second drawee must be awarded a lease to the parcel, all else being regular.

Gerald L. Christensen, Edward C. Green, 30 IBLA 303 (June 6, 1977)

Where minerals not owned by the United States have been leased for oil and gas purposes under the terms of the Mineral Leasing Act for Acquired Lands, the lease must be canceled because only acquired minerals owned by the United States are subject to leasing under that Act.

Duncan Miller, 32 IBLA 137 (Sept. 12, 1977)

Where a noncompetitive oil and gas lease is issued to the successful applicant in a drawing of simultaneously filed offers and the lessee's personal check in payment of the first year's rental is returned by the drawee bank as uncollectible, a decision canceling the lease will be affirmed in the absence of a showing of error on the part of the bank.

Norman Monath, 32 IBLA 392 (Nov. 8, 1977)

The Secretary of the Interior generally has the authority to cancel any oil and gas lease issued contrary to law because of the inadvertence of his subordinates.

Where an oil and gas lease is canceled in part because it was erroneously issued as to that part, there is no authority for the Department to pay to the lessee unrealized anticipated profits or to refund the rental for the portion of the lands retained in the lease. By signing the simultaneous oil and gas drawing card, the offeror agreed to accept a lease for those portions of the tract found by BLM to be available for leasing.

Paul N. Temple, 33 IBLA 98 (Dec. 16, 1977)

COMMUNITIZATION AGREEMENTS

In the absence of an approved communitization agreement involving a Federal oil and gas lease, production from fee land within a State spacing unit cannot be attributed pro rata to Federal leases within the spacing unit, and where there is no drilling operation, producing

OIL AND GAS LEASES--Continued

COMMUNITIZATION AGREEMENTS--Continued

well or well capable of production on such lease, such lease expires at the end of its primary term.

Kirkpatrick Oil Co., 32 IBLA 329 (Oct. 11, 1977)

COMPETITIVE LEASES

The provisions of 30 U.S.C. §§ 188(b) and (c) (1970), and decisions of the Board discussing those provisions, are generally applicable to both competitive and noncompetitive oil and gas leases on which there is no well capable of producing oil or gas in paying quantities.

Oil Resources, Inc., 28 IBLA 394 (Feb. 7, 1977)
84 I.D. 91

Rejection of the high bid tendered for a parcel of land offered at a sale of competitive oil and gas leases will be affirmed on appeal where the case file contains memoranda from the U.S. Geological Survey sufficient to establish that the pre-sale minimum evaluation for the tract was accomplished by a GS lease sale committee consisting of an engineer and a geologist, and their reasoned evaluation was considerably in excess of appellant's bid.

The U.S. Geological Survey is the Secretary's technical expert in matters concerning geological evaluation of tracts of land offered at a sale of competitive oil and gas leases, and the Secretary is entitled to rely on the Survey's reasoned analysis.

Under 43 CFR 3120.3-1, the United States reserves the right to reject any and all bids submitted at a competitive oil and gas lease sale. However, a decision involving the exercise of administrative discretion must be supportable on a rational basis.

Frances J. Richmond, 29 IBLA 137 (Mar. 3, 1977)

In order to constitute a clear and definite offer, a bid for an outer continental shelf oil and gas lease must adequately identify the tract which is the subject of the bid.

It is not the responsibility of Bureau of Land Management employees to decipher ambiguous bids for outer continental shelf oil and gas leases in order to save the bidder from the consequences of his own negligence. A bid which was apparently intended for one tract and contains data appropriate for that tract, but identifies a different tract as the subject of the bid, is properly considered, and rejected as too low, for the identified tract.

A rejected bid in an outer continental shelf oil and gas lease sale may be reconsidered and accepted when it is in the public interest to do so. The essential elements in allowing such a reconsideration are the fairness and impartiality of the sale toward all bidders. In a situation where a bid was initially rejected as too low for the tract identified in the bid and the bidder immediately requests reconsideration because he intended to bid for a different tract, where the tract number stated in the bid corresponds to the block number of the intended tract, where all other relevant data in the bid corresponds to the intended tract and

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

only to the intended tract, and where no other person submitted a bid for the intended tract, it is proper to reconsider the bid to determine if it is in the public interest to accept the bid for the intended tract.

Alaska Oil and Minerals Corp., 29 IBLA 224 (Mar. 23, 1977)
84 I.D. 114

A rejection of a high bid tendered for a parcel of land offered at a sale of competitive oil and gas leases will be affirmed on appeal where the record contains sufficient information from the U.S. Geological Survey to establish that the pre-sale minimum evaluation for the tract, which greatly exceeded the rejected bid, was not arbitrary or capricious, it having been arrived at by a lease sale committee consisting of two geologists and three engineers which in addition to considering the results of a computer analysis took into account a hand compilation and the judgment and knowledge of the committee.

The U.S. Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

Coquina Oil Corp., 29 IBLA 310 (Mar. 30, 1977)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Where the high bid tendered at a competitive onshore oil and gas lease sale is not clearly spurious or irresponsible, and is rejected solely on the basis of a statement by an official that the bid is inadequate and no factual basis for that conclusion appears in the case record, the decision will be set aside and the case remanded for readjudication of the acceptability of the bid.

Yates Petroleum Corp., 32 IBLA 196 (Sept. 15, 1977)

The Bureau of Land Management may not accept a bid in a competitive lease sale where the bid proposes a royalty different from that set out in the lease sale notice.

In a competitive lease sale, the royalty provisions in the lease are those specified in the notice of sale.

The highest bidder in a competitive lease sale does not forfeit his deposit of one-fifth the amount of the bid where he is ineligible to be awarded the lease because he conditions his bid upon royalty provisions other than those set out in the lease sale notice.

Lee E. Loeffler, 33 IBLA 18 (Nov. 22, 1977)

OIL AND GAS LEASES--Continued

CONSENT OF AGENCY

Under the Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1970), if the lands embraced within an oil and gas lease application are under surface jurisdiction of a service or bureau within the Department of the Interior, as are the National Park Service and the Bureau of Reclamation, the consent of the Secretary of the Interior, is necessary under the Act to the leasing of the land. Where the National Park Service recommends that oil and gas leases for lands within the boundaries of the Chickasaw National Recreation Area be rejected in order to maintain the area for the purposes for which it was established, it is proper to accept this recommendation and reject the offers.

Daphfine Shear, David L. Shear, 29 IBLA 33 (Feb. 10, 1977)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1970), requires that the consent of the administrative agency having jurisdiction of the acquired land described in a lease offer be obtained prior to the issuance of an oil and gas lease for such land. The Department of the Interior has no discretionary authority to lease such land where the consent is withheld.

Charles F. Hajek and Frederick L. Smith, 29 IBLA 330 (Mar. 31, 1977)

DESCRIPTION OF LAND

An oil and gas lease offer will not be rejected on the basis of a defective land description merely because some of the land applied for is not available for leasing where the offeror has submitted advance rental for all of the land described. Generally, where an offer describes an entire section and only part of that land is available for leasing, a lease will be issued for the land available and the offer rejected for the balance of the land in the section.

The description of an entire section of land modified by the word "available" in an oil and gas lease application is an offer to lease all of that section, subject to availability for leasing. An offer containing such a description need not be rejected for lack of a legally sufficient description where the offer is accompanied by the required rent for all of the land described therein.

Milan S. Papulak, 30 IBLA 77 (Apr. 18, 1977)

BLM is not required to alter, modify, or correct an over-the-counter oil and gas lease offer in order to resolve a disparity in the land description contained therein.

C. C. Hughes, 33 IBLA 237 (Dec. 28, 1977)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE

Neither the filing of an over-the-counter oil and gas lease offer, nor the holding of a drawing of simultaneously filed offers to determine the first-qualified offeror, creates any right to a lease or any property rights in the offeror that diminish the Secretary's discretion whether or not to issue a noncompetitive oil and gas lease on a given tract.

An oil and gas lease is not issued until it is signed by the authorized officer; the acceptance of first year's rental in advance as required by regulation does not create a lease contract. Until lease issuance, the Secretary retains his discretion to lease or not to lease a given tract.

James W. Canon, et al., 1 SEC. 1 (Apr. 15, 1977) 84 I.D. 176

When the Secretary of the Interior has exercised his discretionary authority over the issuance of oil and gas leases to promulgate a Public Land Order closing an area of public lands to oil and gas leasing for the purpose of preserving and developing the potash deposits therein belonging to the United States, it is proper to reject oil and gas lease offers for such withdrawn lands.

AA Minerals Corp., 30 IBLA 259 (May 31, 1977)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the Mineral Leasing Act.

Duncan Miller, 30 IBLA 350 (June 8, 1977)

The Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn under the Mineral Leasing Act.

Duncan Miller, 31 IBLA 351 (July 25, 1977)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper showing that the leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the Mineral Leasing Act.

Duncan Miller, 31 IBLA 371 (Aug. 4, 1977)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Yates Petroleum Corp., 32 IBLA 196 (Sept. 15, 1977)

The Secretary of the Interior may in his discretion reject any offer to lease public lands for oil and gas upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the Mineral Leasing Act. Where part of the lands applied for are in the Bonneville Salt Flats, and the Bureau of Land Management determines that oil and gas leasing activities are not compatible with the primary management objective to prevent irreparable damage to a significant resource, rejection of the lease offers or the requirement of execution of surface occupancy stipulations will be affirmed.

Vern K. Jones, et al., Esdras K. Hartley, 33 IBLA 74 (Dec. 6, 1977)

The decision to issue an oil and gas lease to the first-qualified offeror is within the discretion of the Secretary of the Interior, and offers within proposed wild and scenic river areas may be rejected to protect such areas.

Questa Petroleum Co., 33 IBLA 116 (Dec. 16, 1977)

DRILLING

An oil and gas lease is extended by operation of law for 2 years beyond the expiration of its primary term when actual drilling operations were commenced on the lease (or for the lease under a unit plan) prior to the expiration of the primary term and such operations are being diligently prosecuted on the expiration date, even though the lease may also have production at that time.

Rio Blanco Natural Gas Co., 30 IBLA 191 (May 19, 1977)
84 I.D. 198

EXTENSIONS

The lessee of an oil and gas lease, issued after Sept. 2, 1960, which has reached the end of its primary term, must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1970), on or before the regular anniversary date of the lease. Failure to submit the rental timely will result in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1970). Unless the lessee can show that he is entitled to reinstatement of his lease under 30 U.S.C. § 188(c) (1970), he cannot obtain the extension.

The discretionary authority granted to the Secretary of the Interior by 30 U.S.C. § 188(d) (1970), to reinstate oil and gas leases terminated for failure to

OIL AND GAS LEASES--Continued

EXTENSIONS--Continued

pay rental timely, which leases are eligible for extensions under 30 U.S.C. § 226-1(d) (1970), because drilling operations commenced prior to the end of the term of the lease and were being diligently prosecuted at that time, applies only to oil and gas leases issued before Sept. 2, 1960. An oil and gas lease issued after that date, which has terminated for failure to pay rental timely, can be reinstated only under the provisions of 30 U.S.C. § 188(c) (1970).

Oil Resources, Inc., 28 IBLA 394 (Feb. 7, 1977)
84 I.D. 91

A Bureau of Land Management decision extending the lease term of an oil and gas lease for 2 years following the termination of the unit agreement of which the lease was a part is premature, where the lessee has appealed the Geological Survey's determination of the effective date of termination of the unit agreement. The Bureau of Land Management decision will be set aside and the case remanded to await the final outcome of the lessee's appeal of the Geological Survey determination.

Tenneco Oil Co., 29 IBLA 157 (Mar. 7, 1977)

An oil and gas lessee, who files the necessary subsequent joinder documents with the Area Oil and Gas Supervisor, Geological Survey, in accordance with the subsequent joinder procedures outlined in the unit agreement, will have his lease committed to the unit as of the date of filing with the Area Oil and Gas Supervisor for the purpose of extension of the lease on the basis of production within the unit. However, the commitment does not become effective for determining the benefits and obligations under the unit agreement, as to the parties to the agreement, until the first day of the month following the filing.

Bruce Anderson, 30 IBLA 179 (May 19, 1977)

An oil and gas lease is extended by operation of law for 2 years beyond the expiration of its primary term when actual drilling operations were commenced on the lease (or for the lease under a unit plan) prior to the expiration of the primary term and such operations are being diligently prosecuted on the expiration date, even though the lease may also have production at that time.

Rio Blanco Natural Gas Co., 30 IBLA 191 (May 19, 1977)
84 I.D. 198

The lessee of an acquired lands oil and gas lease issued after Sept. 2, 1960, which has reached the end of its primary term, must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1970), on or before the regular anniversary date of the lease. Failure to submit the rental timely will result in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1970). Unless the lessee can show that he is entitled to reinstatement of his lease under 30 U.S.C. § 188(c) (1970),

OIL AND GAS LEASES--Continued

EXTENSIONS--Continued

the lease must be deemed to have terminated at the end of its stated term.

Shell Oil Co., 30 IBLA 290 (June 1, 1977)

By the terms of the mineral leasing laws, unit agreement, and by regulation, unitized oil and gas leases issued after Sept. 2, 1960, which reach the end of a 2-year extended term by drilling expire by operation of law if there is not production of oil or gas in paying quantities within the unit at that time.

Corrine Grace, 30 IBLA 296 (June 1, 1977)

To qualify for a 2-year extension of an oil and gas lease under the diligent drilling provision of 30 U.S.C. § 226(e) (1970), it must be shown that actual drilling operations were being prosecuted on the leasehold on the last day of the lease term, with good faith intent to complete a producing well. Good faith attempts to initiate "actual drilling operations" which are frustrated by inclement weather, personnel shortages and equipment failures so that "actual drilling operations" are not being prosecuted on the lease on the last day of the lease term do not serve to gain the lease an extension.

Burton W. Hancock, 31 IBLA 18 (June 17, 1977)

Noncompetitive oil and gas leases are issued for a primary term of 10 years. Such leases expire automatically by operation of law at the end of their 10-year terms unless the presence of one of the statutory grounds for extension of the term is established.

Duncan Miller, 33 IBLA 83 (Dec. 8, 1977)

A 20-year oil and gas lease which has been renewed for successive 10-year periods, and which at the time of expiration of a 10-year period is committed to an approved unit plan of development, is not entitled to another 10-year renewal, but is extended pursuant to 30 U.S.C. § 226(j) (1970).

Anne Burnett Tandy, et al., 33 IBLA 106 (Dec. 16, 1977)

FIRST QUALIFIED APPLICANT

Where an agent of an offeror for a simultaneous oil and gas lease signs the entry card by affixing a rubber-stamped facsimile of the offeror's signature, the requirements of 43 CFR 3102.6-1 apply and separate statements of interest by both offeror and the agent must be filed, or the offer will be rejected.

Where a person files an oil and gas lease offer through a leasing service under an arrangement whereby the leasing service advances the first year's rental, selects the land, and controls the address at which the offeror may be reached, but no enforceable agreement is entered into whereby the offeror is obligated to transfer any interest in any lease to be issued to the leasing service, the service is not a party in interest in the offer merely because it may have a hope or expectancy

FIRST QUALIFIED APPLICANT--Continued

of acquiring an interest, and the offeror is not precluded from stating that he is the sole party in interest in the offer.

D. E. Pack, 30 IBLA 166 (May 19, 1977) 84 I.D. 192

Improper issuance of a noncompetitive oil and gas lease in response to a defective drawing entry card in the simultaneous filing procedure does not foreclose the right of the second drawn applicant whose drawing entry card was complete when filed to a lease for the parcel named; the erroneously issued lease must be canceled, and upon cancellation, the second drawee must be awarded a lease to the parcel, all else being regular.

Gerald L. Christensen, Edward C. Green, 30 IBLA 303 (June 6, 1977)

Where an oil and gas lease offer is signed by an agent on behalf of the offeror, the regulations with respect to qualifications of lessees require evidence of the authority of the agent and separate statements by the offeror and the agent regarding the nature and extent of any interest the agent has in the lease. The same requirement applies where the offeror's facsimile signature is affixed on the offer by an agent. An offer must be rejected where this information is not filed.

The Bureau of Land Management (BLM) has a responsibility to issue noncompetitive oil and gas leases only to the first-qualified offeror. A rubber-stamped or other form of facsimile signature, unlike a handwritten signature, does not give rise to a presumption that it was personally executed by the offeror. The BLM may inquire of the circumstances under which the signature was stamped on the offer to determine whether compliance with 43 CFR 3102.6-1 was required.

Charlotte L. Thornton, William M. Weaver, Jr., Robert L. Smith, 31 IBLA 3 (June 15, 1977)

An over-the-counter oil and gas lease offer, properly rejected because it failed to meet the requirements of the regulations, may be considered as having priority as of the date the defect is cured where the curative action was taken during an appeal from the rejection of the offer.

Emerald Oil Co., 31 IBLA 119 (June 24, 1977)

Where an agent of an offeror for a simultaneous oil and gas lease signs the entry card by affixing a rubber-stamped or other facsimile of the offeror's signature, the requirements of 43 CFR 3102.6-1 apply, and separate statements of interest by both offeror and the agent must be filed, or the offer will be rejected.

Ray H. Thames, 31 IBLA 167 (July 5, 1977)

OIL AND GAS LEASES--Continued

FIRST QUALIFIED APPLICANT--Continued

A first-drawn simultaneous drawing entry card which is filed by a partnership but which is not accompanied by statements required by the pertinent regulation or which does not refer to the file serial number of the record where the statements have previously been filed is defective and must be rejected.

Norcross Partners, 31 IBLA 181 (July 5, 1977)

When an individual files an oil and gas lease offer through a leasing service under an agreement where the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein. Such an agreement creates for the leasing service an interest in the lease as that term is defined in 43 CFR 3100.0-5(b).

Lola I. Doe, 31 IBLA 394 (Aug. 19, 1977)

When an individual files an oil and gas lease offer through a leasing service under an agreement where the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein. Such an agreement creates for the leasing service an interest in the lease as that term is defined in 43 CFR 3100.0-5(b).

Sidney H. Schreter, William F. Wopp, Jr., 32 IBLA 148 (Sept. 12, 1977)

Where an applicant fails to file five copies of a noncompetitive lease offer as required by the regulations in 43 CFR 3111.1-1(a) the lease offer is properly rejected. Failure to submit the required number of copies is not included in the list of curable defects in 43 CFR 3111.1-1(e) and, therefore, is fatal to the oil and gas offer.

John P. Errebo, Jr., 32 IBLA 191 (Sept. 15, 1977)

If a noncompetitive oil and gas lease is issued for a particular parcel of land, it must be issued to the first-qualified applicant. Under the simultaneous drawing procedures, a defective entry card must be rejected.

Walter M. Sorensen, 32 IBLA 345 (Oct. 21, 1977)

OIL AND GAS LEASES--Continued

FUTURE AND FRACTIONAL INTEREST LEASES

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest, filed before Sept. 30, 1976, must have been accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which was defective for failure to comply with this mandatory regulation must be rejected where it was filed in the simultaneous drawing procedure.

Duncan Miller, 29 IBLA 1 (Feb. 7, 1977)

Mary Nan Spear, 31 IBLA 386 (Aug. 16, 1977)

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. When an offeror submits, on appeal, a copy of such statement but the date on the statement differs from the date on the card, and the offeror does not allege he filed the statement simultaneously with the offer, such offer must be rejected for failure to comply with a mandatory regulation.

Duncan Miller, 29 IBLA 43 (Feb. 16, 1977)

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest, filed before Oct. 28, 1976, must have been accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which was defective for failure to comply with this mandatory regulation must be rejected where it was filed in the simultaneous drawing procedure.

Vernon C. Howell, 30 IBLA 70 (Apr. 18, 1977)

Where the regulation, 43 CFR 3130.4-4 (1975), in effect at the time of filing, required that an oil and gas lease offer for land in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States, a simultaneously filed lease offer which is not accompanied by the required statement must be rejected, and the defect may not be "cured" by submission of the statement at a later time.

David F. Owen, 31 IBLA 24 (June 20, 1977)

Where the United States owns only fractional mineral interest in the land, an offer filed before Sept. 30, 1976, for a simultaneous oil and gas lease drawing, must be rejected where it is not accompanied by a statement showing extent of offeror's ownership of operating rights in fractional mineral interest not owned by the United States.

Bruce T. Cameron, Carol Heller, 31 IBLA 234 (July 12, 1977)

OIL AND GAS LEASES--Continued

FUTURE AND FRACTIONAL INTEREST LEASES--Continued

Where the regulation, 43 CFR 3130.4-4 (1975), in effect at the time of filing, required that an oil and gas lease offer for acquired land in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States, a simultaneously filed oil and gas lease offer which is not accompanied by the required statement must be rejected.

Where a regulation requires that an acquired lands oil and gas lease offer be accompanied by a separate statement as to the offeror's ownership of operating rights to the fractional mineral interest not owned by the United States, and the offer is rejected for noncompliance therewith, the offeror's bald assertion that he filed such statement is insufficient to prove such a fact without corroboration. A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

W. J. Langley, 32 IBLA 118 (Sept. 12, 1977)

KNOWN GEOLOGICAL STRUCTURE

Except for establishing priority of filing, the drawing of an offer for a noncompetitive oil and gas lease creates no vested rights in the offeror. If subsequent to the filing of a noncompetitive oil and gas lease offer and prior to issuance of a lease the land described therein is determined to be in a known geological structure of a producing oil or gas field, the noncompetitive lease offer must be rejected.

Guy W. Franson, 30 IBLA 123 (May 12, 1977)

Lands within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding pursuant to 43 CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where either before or after the filing of the offer, but prior to the issuance of the lease, the land is determined to be within the known geologic structure of a producing oil or gas field.

An applicant for an oil and gas lease who challenges a determination by the Geological Survey that lands are situated within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error and the determination will not be disturbed in the absence of a clear and definite showing of error.

Curtis Wheeler, 31 IBLA 221 (July 7, 1977)

Lands within a known geological structure of a producing oil or gas field may only be leased by competitive bidding pursuant to 43 CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected.

Curtis D. Wheeler, 31 IBLA 354 (July 25, 1977)

OIL AND GAS LEASES--Continued

KNOWN GEOLOGICAL STRUCTURE--Continued

Where a Bureau of Land Management decision rejects in part a simultaneous oil and gas lease offer because certain lands encompassed by the offer are within a known geologic structure, but appellant submits a Geological Survey letter which appellant states admits that such determination was based on erroneous information, the Bureau decision will be set aside and the case remanded for further appropriate consideration.

William E. Frazier, Jr., 32 IBLA 320 (Oct. 3, 1977)

LANDS SUBJECT TO

An oil and gas lease offer made pursuant to the Mineral Leasing Act for Acquired Lands is properly rejected where the subject lands are not acquired lands but, rather, are patented with a reservation of mineral rights in the United States.

John O. Clay, 28 IBLA 353 (Jan. 24, 1977)

Where the Bureau of Land Management has determined that lands listed under the simultaneous oil and gas leasing system should not have been listed solely because the lands lie within "a critical watershed which is to be the subject of an Environmental Impact Statement," the first-drawn offer will not be rejected but may remain in suspended state until completion of the EIS and determination at that time whether the lands may be leased subject to stipulations for protection of the watershed.

Adrian Overton, 29 IBLA 66 (Feb. 18, 1977)

Lands withdrawn for the protection of Alaska Natives' selection rights are not available for oil and gas leasing under the Mineral Leasing Act. 43 U.S.C. § 1621(i) (Supp. III 1973).

James W. Canon, et al., 1 SEC. 1 (Apr. 15, 1977)
84 I.D. 176

When the Secretary of the Interior has exercised his discretionary authority over the issuance of oil and gas leases to promulgate a Public Land Order closing an area of public lands to oil and gas leasing for the purpose of preserving and developing the potash deposits therein belonging to the United States, it is proper to reject oil and gas lease offers for such withdrawn lands.

AA Minerals Corp., 30 IBLA 259 (May 31, 1977)

An oil and gas lease offer must be rejected as to lands applied for which are held in trust for Indians and are not available under the Mineral Leasing Act. Even though the minerals in these lands have been reserved to the United States, mineral development is not possible at this time because the language of the exchange

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

act under which the lands were acquired requires further promulgation of special regulations by the Secretary as a condition precedent to such development.

Thomas D. Chace, 31 IBLA 13 (June 17, 1977)

43 CFR Subpart 3112 renders invalid an over-the-counter oil and gas lease offer filed for lands in canceled or relinquished leases or leases which have terminated by operation of law, for such lands are subject to simultaneous offers only.

Robert S. Bickel, 31 IBLA 201 (July 6, 1977)

Land included within an outstanding oil and gas lease is not available for leasing and an oil and gas offer filed for such land must be rejected.

Curtis D. Wheeler, 31 IBLA 354 (July 25, 1977)

NONCOMPETITIVE LEASES

Regardless of whether offeror is described as "unqualified" or "disqualified," 43 CFR 3112.5-1 requires that upon successful drawees' failure to pay first year's rental, the lands shall be listed subsequently under the simultaneous drawing procedure rather than leased under the regular over-the-counter procedure in 43 CFR Subpart 3111.

Robert G. Lynn, 28 IBLA 310 (Jan. 14, 1977)

Where the Bureau of Land Management has determined that lands listed under the simultaneous oil and gas leasing system should not have been listed solely because the lands lie within "a critical watershed which is to be the subject of an Environmental Impact Statement," the first-drawn offer will not be rejected but may remain in suspended state until completion of the EIS and determination at that time whether the lands may be leased subject to stipulations for protection of the watershed.

Adrian Overton, 29 IBLA 66 (Feb. 18, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn with first priority prior to the specified date.

Raymond N. Joeckel, 29 IBLA 170 (Mar. 14, 1977)

Milton J. Lebsack, 29 IBLA 316 (Mar. 30, 1977)

Doris N. Sterkel, Richard L. Sterkel, 30 IBLA 39 (Apr. 12, 1977)

X O Exploration, Inc., 30 IBLA 209 (May 20, 1977)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

Francis L. Hill, 32 IBLA 202 (Sept. 16, 1977)

Thomas G. Fails, et al., 32 IBLA 302 (Sept. 30, 1977)

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease on an offer drawn with the first priority at a simultaneous drawing when she fails to pay the first year's rental within 15 days of receipt of the notice that such payment is due.

Carma M. Pooley, 29 IBLA 304 (Mar. 30, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn with first priority prior to the effective date of the increase.

Raymond N. Joeckel, et al., 30 IBLA 32 (Apr. 11, 1977)

Karen Cotter, et al., 30 IBLA 88 (Apr. 27, 1977)

Duncan Miller, 30 IBLA 90 (Apr. 27, 1977)

William C. Kirkwood, 31 IBLA 178 (July 5, 1977)

Duncan Miller, 31 IBLA 349 (July 22, 1977)

Fred Goodstein, 32 IBLA 25 (Aug. 31, 1977)

Paul Landis, 32 IBLA 374 (Oct. 31, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date.

Jary J. Hunnicutt, et al., 30 IBLA 86 (Apr. 27, 1977)

Except for establishing priority of filing, the drawing of an offer for a noncompetitive oil and gas lease creates no vested rights in the offeror. If subsequent to the filing of a noncompetitive oil and gas lease offer and prior to issuance of a lease the land described therein is determined to be in a known geological structure of a producing oil or gas field, the noncompetitive lease offer must be rejected.

Guy W. Franson, 30 IBLA 123 (May 12, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases to be issued pursuant to the simultaneous filing procedures where the drawing was held prior to the effective date of the rent increase, and leases to be issued for a

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

regular over-the-counter offer where the offer was filed prior to the effective date.

Casey C. Jansen, et al., 30 IBLA 134 (May 12, 1977)

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease on an offer drawn with the first priority at a simultaneous drawing when he fails to pay the first year's rental within 15 days (or the first business day thereafter) of receipt of the notice that such payment is due.

Jack Koegel, 30 IBLA 143 (May 12, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases to be issued to successful offerors at simultaneous drawings held prior to the effective date of the rate increase.

Melvin R. Hobgood, 30 IBLA 163 (May 18, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn prior to the effective date of the increase.

Marie A. Fiel, et al., 30 IBLA 308 (June 6, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, even though the lease offers were filed prior to the specified date.

Guy M. Willis, 30 IBLA 344 (June 8, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate applies to all leases issued after that date, regardless of the date the offer to lease or drawing entry card was filed.

Duncan Miller, 30 IBLA 350 (June 8, 1977)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, even though the lease offer was filed prior to the date of the regulation. The imposition of the increased rate is not discriminatory as it applies to all leases issued after a certain date.

Guy M. Willis, 30 IBLA 373 (June 10, 1977)

The filing of a noncompetitive oil and gas lease offer, prior to acceptance, does not create any right to a lease or legal interest which restricts the discretionary authority of the Secretary of the Interior over lease issuance. Thus, an amended regulation raising the lease rental charge may be applied to lease offers which have been previously filed but not accepted and such action is not violative of the Fifth Amendment.

Barbara A. Joeckel, 30 IBLA 376 (June 10, 1977)

43 CFR Subpart 3112 renders invalid an over-the-counter oil and gas lease offer filed for lands in canceled or relinquished leases or leases which have terminated by operation of law, for such lands are subject to simultaneous offers only.

Robert S. Bickel, 31 IBLA 201 (July 6, 1977)

Lands within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding pursuant to 43 CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where either before or after the filing of the offer, but prior to the issuance of the lease, the land is determined to be within the known geologic structure of a producing oil or gas field.

Curtis Wheeler, 31 IBLA 221 (July 7, 1977)

A simultaneous oil and gas offeror is properly disqualified under 43 CFR 3112.4-1 from receiving lease when she fails to pay the first year's rental within 15 days of receipt of the notice that such payment is due.

Karen L. Brown, 31 IBLA 239 (July 12, 1977)

Lands within a known geological structure of a producing oil or gas field may only be leased by competitive bidding pursuant to 43 CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected.

Curtis D. Wheeler, 31 IBLA 354 (July 25, 1977)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to over-the-counter filing procedures, even though the lease offers were submitted prior to the effective date of the increase.

Brad J. Hays, 31 IBLA 374 (Aug. 5, 1977)

Cecil C. Wall, 32 IBLA 27 (Aug. 31, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases to be issued for a regular over-the-counter offer where the offer was filed prior to the effective date.

Altex Oil Corp., 32 IBLA 18 (Aug. 31, 1977)

Altex Oil Co., 32 IBLA 44 (Sept. 2, 1977)

Altex Oil Corp., 32 IBLA 390 (Nov. 7, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date pursuant to over-the-counter offers or pursuant to the simultaneous filing procedures, even though the offers or entry cards were filed with BLM prior to the specified date.

An oil and gas lease offer under the Mineral Leasing Act, as amended, 30 U.S.C. § 181 et seq. (1970), does not create a property right in the offeror but is merely a hope or expectation. It is not a "vested right," a present legal or equitable "title," "interest" or "ownership" or "perfected right," to come within the protection of the Fifth or Fourteenth Amendment.

D. R. Gaither, et al., 32 IBLA 106 (Sept. 12, 1977)

The filing of an application for a noncompetitive oil and gas lease, prior to acceptance, does not create a right to a lease immune from application of a subsequently amended administrative regulation. An increased rental rate is properly applied to an oil and gas lease offer pending before the effective date of the rate change but which has not been accepted prior to that time.

Viola J. Kirkwood, 32 IBLA 199 (Sept. 16, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, even though the lease offers were filed prior to the specified date. The filing of an application for a lease prior to its acceptance does not create a right to a lease which is

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

immune from application of a subsequently amended administrative regulation, nor does administrative delay in the processing of the lease offer preclude proper application of such regulation.

Paul C. Kohlman, 32 IBLA 240 (Sept. 21, 1977)

Increased per acre rental, as directed under Jan. 5, 1977, revision of 43 CFR 3103.3-2(a), is applicable to all noncompetitive oil and gas leases issued after Feb. 1, 1977, including leases for which offers, both simultaneous and over-the-counter, were filed prior to revision of the regulation.

Duncan Miller, et al., 32 IBLA 289 (Sept. 27, 1977)

Noncompetitive oil and gas leases are issued for a primary term of 10 years. Such leases expire automatically by operation of law at the end of their 10-year terms unless the presence of one of the statutory grounds for extension of the term is established.

Duncan Miller, 33 IBLA 83 (Dec. 8, 1977)

The Secretary's policy against appealing the rejection of oil and gas lease offers to the Interior Board of Land Appeals separately from an appeal of the decision to issue conveyance, confers on the Alaska Native Claims Appeal Board exclusive jurisdiction over decisions rejecting noncompetitive oil and gas lease offers because of conflicts with land selections by Native Corporations under ANCSA.

Appeal of Terry E. Krize and J. Burglin, 2 ANCAB 247 (Dec. 28, 1977) 84 I.D. 1007

OPTIONS

Where a person files an oil and gas lease offer through a leasing service under an arrangement whereby the leasing service advances the first year's rental, selects the land, and controls the address at which the offeror may be reached, but no enforceable agreement is entered into whereby the offeror is obligated to transfer any interest in any lease to be issued to the leasing service, the service is not a party in interest in the offer merely because it may have a hope or expectancy of acquiring an interest, and the offeror is not precluded from stating that he is the sole party in interest in the offer.

D. E. Pack, 30 IBLA 166 (May 19, 1977) 84 I.D. 192

PRODUCTION

"Production" as used in all Federal oil and gas leases includes all oil and gas withdrawn from a reservoir.

Response to Feb. 17, 1976, Request from the General Accounting Office: Interpretation of Mineral Leasing Act of 1920, and Outer Continental Shelf Lands Act Royalty Clause, M-36888 (Oct. 4, 1976) 84 I.D. 54

OIL AND GAS LEASES--Continued

PRODUCTION--Continued

Oil or gas that is wasted is in a category by itself, distinctly separable from "production," when it is oil or gas that is lost on the surface or in the subsurface through the negligence of the lessee, i.e., without the specific sanction of the supervisor.

Computation of Moneys Due the United States on Oil and Gas Lost as a Result of Pennzoil's Blowout, M-36888 (Supp.) (Jan. 19, 1977) 84 I.D. 64

A 10-year renewal of a 20-year oil and gas lease expires by its own terms where no timely application for further renewal is made by the lessee. Such lease is not held by production and terminates automatically on its final anniversary date notwithstanding the existence of a producing well on the leasehold.

Peacock Oil Company, Inc., Twin Arrow, Inc., 29 IBLA 74 (Feb. 23, 1977)

A 10-year renewal of a 20-year oil and gas lease expires by its own terms where no timely application for further renewal is made by the lessee, pursuant to 43 CFR 3107.8-2; however, the language of the regulation is permissive and a delay in filing a renewal application may be excused in the presence of special circumstances.

Peacock Oil Company, Inc., Twin Arrow, Inc., 30 IBLA 103 (May 2, 1977)

An oil and gas lease is extended by operation of law for 2 years beyond the expiration of its primary term when actual drilling operations were commenced on the lease (or for the lease under a unit plan) prior to the expiration of the primary term and such operations are being diligently prosecuted on the expiration date, even though the lease may also have production at that time.

Rio Blanco Natural Gas Co., 30 IBLA 191 (May 19, 1977) 84 I.D. 198

The U.S. Geological Survey is the technical expert of the Department of the Interior in matters concerning geologic evaluations. The Bureau of Land Management is entitled to rely on mineral determinations of Survey, such as qualification of a test well as a discovery well defined by a unit agreement, in the absence of a clear and definite showing of error.

Corrine Grace, 30 IBLA 296 (June 1, 1977)

REINSTATEMENT

The discretionary authority granted to the Secretary of the Interior by 30 U.S.C. § 188(d) (1970), to reinstate oil and gas leases terminated for failure to pay rental timely, which leases are eligible for extensions under 30 U.S.C. § 226-1(d) (1970), because drilling operations commenced prior to the end of the term of the lease and were being diligently prosecuted at that time, applies only to oil and gas leases issued

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

before Sept. 2, 1960. An oil and gas lease issued after that date, which has terminated for failure to pay rental timely, can be reinstated only under the provisions of 30 U.S.C. § 188(c) (1970).

The provisions of 30 U.S.C. §§ 188(b) and (c) (1970), and decisions of the Board discussing those provisions, are generally applicable to both competitive and noncompetitive oil and gas leases on which there is no well capable of producing oil or gas in paying quantities.

An oil and gas lease which has terminated by operation of law for failure to pay the annual rental timely may not be reinstated under 30 U.S.C. § 188(c) (1970), unless, among other things, payment has been tendered at the proper office within 20 days of the date due.

Oil Resources, Inc., 28 IBLA 394 (Feb. 7, 1977) 84 I.D. 91

An oil and gas lease terminated by operation of law for failure of the lessee to pay the annual rental on or before the anniversary date of the lease may be reinstated only if the late payment is justifiable or not due to a lack of reasonable diligence. Where information concerning the terminal illness of lessee's brother demonstrates the requisite proximity and causality to justify the delay in payment, the lease may be reinstated.

Billy Wright, 29 IBLA 81 (Feb. 23, 1977)

A petition for reinstatement of an oil and gas lease terminated for lack of timely payment of the rental is properly denied where the appellant does not show reasonable diligence in mailing the payment or a justifiable excuse for the delay in payment. A number of factors caused by the inadvertence or negligence of appellant's employees which combined to cause late payment of the rental do not justify the failure to make a timely payment.

Phillips Petroleum Co., 29 IBLA 114 (Feb. 23, 1977)

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays. A lessee whose payment is mailed 6 days after the due date is not reasonably diligent.

Extenuating circumstances outside the control of the lessee occurring near the anniversary date of the lease may constitute justifiable cause for a late rental payment where the circumstances are the proximate cause of the failure to make timely payment. However, where appellant has entrusted payment to an agent who becomes ill, and a subagent, who assumes the agent's responsibilities neglects to make payment timely, the illness of the agent is not the proximate cause of the late payment where no connection is made between the date of the agent's illness and the due date of the rental and a decision denying reinstatement will be affirmed.

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

The burden of proving that the late payment was either justifiable or not due to a lack of reasonable diligence is on the lessee, and this burden includes showing the proximity of the occurrence to the anniversary date.

Lucyann W. Cameron, 29 IBLA 141 (Mar. 4, 1977)

An appeal to the Board of an automatic termination of an oil and gas lease will be dismissed as not ripe where appellant sends the appeal to the Board before a Notice of Termination of Lease has been issued and a Petition for Reinstatement rejected by the State Office, Bureau of Land Management.

Read & Stevens, Inc.; Franklin, Aston & Fair, Ltd.; and Colorado Interstate Gas Co., 29 IBLA 154 (Mar. 4, 1977)

A late payment of rental due for an oil and gas lease results in termination of the lease, and the lease will not be reinstated, where the lessee relied upon a third party to pay the rental, but no acceptable justification is shown for the delay.

Lynn Schusterman, 29 IBLA 182 (Mar. 18, 1977)

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays. A lessee whose payment is mailed more than 16 days after the due date is not reasonably diligent.

Reliance upon receipt of a courtesy notice can neither prevent the lease from terminating by operation of law nor serve to justify a failure to pay the lease rental timely.

Energy Reserve, Inc., 30 IBLA 11 (Apr. 4, 1977)

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays. Where payment is mailed 3 days after the anniversary date and where due to a combination of trips in other vehicles, farm chores, and simple inadvertence, it was left on a car seat for 4 days, the failure to exercise reasonable diligence is not justifiable because the factor causing the delay is not one which is ordinarily outside of the control of the lessee.

Hildred W. Bernthal, Shirley M. Bernthal, 30 IBLA 18 (Apr. 7, 1977)

Under 30 U.S.C. § 188(c) (1970), the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment of rental, unless rental payment is tendered at the proper office within 20 days of the due date.

Vern H. Bolinder, 30 IBLA 26 (Apr. 11, 1977)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

A lessee whose oil and gas lease terminated by operation of law for failure to pay rental timely may be found to have exercised "reasonable diligence" in mailing the rental payment on Oct. 29 when it was due on Nov. 1, and the lease should therefore be considered for reinstatement.

George C. Ott, 30 IBLA 146 (May 16, 1977)

An oil and gas lease, terminated for failure to pay annual rental on or before the anniversary date of the lease, can be reinstated only if the petitioner shows that the failure was either justifiable or not due to a lack of reasonable diligence. Mailing the rental payment after it is due does not meet the reasonable diligence requirement.

In petitioning for reinstatement of an oil and gas lease terminated by operation of law for failure to submit the rental payment on or before the anniversary date of the lease, simple inadvertence, or ignorance of the regulations are not justifiable excuses for delay in making the rental payment.

Under 30 U.S.C. § 188(c) (1970), the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment of rental, unless the rental payment is tendered at the proper office within 20 days of the due date.

Apostolos Paliombeis, 30 IBLA 153 (May 16, 1977)

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays. A lessee who mails payment from New York City to Cheyenne, Wyoming, 2 days before the anniversary date is not reasonably diligent.

Rosemary Weaver, et al., 30 IBLA 227 (May 26, 1977)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated only when the lessee shows that his failure to pay the rental on or prior to the anniversary date was either justifiable or not due to a lack of reasonable diligence. Mailing the rental payment after it is due does not satisfy the reasonable diligence requirement, nor does the absence of lessee's president from the company office serve to justify the lack of reasonable diligence.

Helena Silver Mines, Inc., 30 IBLA 262 (May 31, 1977)

A petition for reinstatement of an acquired lands oil and gas lease terminated for lack of timely payment of the rental is properly denied where the lessee fails to show reasonable diligence in mailing the payment or a justifiable excuse for the delay in payment. The error of an employee in failing to recognize that rental payment was required for the leases in question does not justify the failure to make a timely payment.

Shell Oil Co., 30 IBLA 290 (June 1, 1977)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

An oil and gas lease terminated by operation of law for failure to pay advance rental on time may be reinstated only when the lessee shows that his failure to pay the rental on or before the anniversary date was either justifiable or not due to lack of reasonable diligence. Mailing the rental due in Reno from Las Vegas on the day before the anniversary date does not constitute reasonable diligence nor is the inexperience or lack of knowledge of any employee a justifiable reason for the late payment.

An oil and gas lease terminated by operation of law for failure to pay the annual rental on or before the anniversary date will not be reinstated solely because the State Office deposited the late rental check.

Nevada Western Oil Co., 30 IBLA 379 (June 10, 1977)

The Board of Land Appeals will entertain and grant a motion by the Bureau of Land Management to remand an oil and gas lease case on appeal to the Board from a decision holding the lease had terminated and denying a petition to reinstate the lease, where BLM discovered, while the case was on appeal, that its decision was predicated on an erroneous factual basis in that annual rental for the lease had actually been paid on time, but the check had been misplaced by BLM and was later found.

Kathryn A. Dalton, 31 IBLA 1 (June 15, 1977)

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays. Instances of forgetfulness, simple inadvertence or ignorance of the regulations are not covered. Where payment is mailed from Binghamton, New York, to Salt Lake City, Utah, 1 day before the anniversary date the lessee cannot be said to be reasonably diligent.

An estoppel of the Government to refuse acceptance of late rental payments is not created where in the past the BLM accepted rental payments after the anniversary date pursuant to 43 CFR 3103.3-2(e)(1) providing if the office to receive payment is closed on the anniversary date, payment will be considered timely if received on the next official working day.

A prerequisite of the reinstatement process is the tender of payment within 20 days of the anniversary date which protects the right of the lessee to petition for reinstatement. The check is then deposited in an unearned account to create a record of it, and bring it under accounting control, however, depositing of the check does not create an estoppel against the Government.

Adolph F. Muratori, 31 IBLA 39 (June 21, 1977)

Where it is alleged that a bank erroneously dishonored a check drawn thereon, and an official of the bank admits that the payment was refused by mistake, the error of the bank will not vitiate the otherwise proper payment of rent.

Pauline V. Trigg, John H. Trigg, 31 IBLA 296 (July 22, 1977)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

A lessee generally has not demonstrated reasonable diligence where the rental payment was postmarked in California the day before it was due in Utah. An allegation that the payment was mailed prior to the postmark date must be corroborated by sufficient evidence. A suggestion that the rental check was mailed on the date written and allegations of poor services by the local post office are not sufficient alone to overcome the postmark date.

David W. Gregg, 32 IBLA 293 (Sept. 28, 1977)

A lessee requesting reinstatement of an oil and gas lease terminated for failure to pay rental timely must show that he deposited the rental payment in the mail sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the mail in order to demonstrate reasonable diligence under 30 U.S.C. § 188(c) (1970).

Reliance on receipt of a courtesy billing notice from the Bureau of Land Management is not a justifiable excuse for reinstatement of an oil and gas lease terminated for failure to pay rental timely. The failure of the Bureau of Land Management to change a lessee's address of record resulting in the lessee not receiving the courtesy notice does not relieve the lessee from the obligation to pay rental timely.

Richard C. Corbyn, 32 IBLA 296 (Sept. 28, 1977)

An oil and gas lease, terminated by operation of law for failure to pay annual rental timely, may be reinstated only if, among other things, the lessee exercised reasonable diligence, i.e., the lessee sent the rental payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal and delivery of the mail, or if the lessee can show his failure to pay timely was justifiable, i.e., the delay was caused by factors outside his control, which were the proximate cause of the failure.

The oil and gas lessee of record is responsible for paying rental timely and for meeting the reinstatement requirements. The fact that a lessee attempts to assign his lease does not absolve him of the rental and reinstatement requirements until the assignment is approved by the Bureau of Land Management.

A rental payment mailed in Houston, Texas, the day before it was due in Denver, Colorado, does not alone show an exercise of reasonable diligence. An argument that the failure of a rental payment to arrive timely was the fault of the U.S. Postal Service does not provide justifiable excuse for reinstatement of the lease in the absence of reasonable diligence.

Leonard A. J. Tancredi, 32 IBLA 325 (Oct. 11, 1977)

An oil and gas lease, terminated for failure to pay annual rental on or before the anniversary date of the lease, can be reinstated only if the petitioner shows that the failure was either justifiable or not due to a lack of reasonable diligence. Where the evidence of a postmark indicating that a rental payment was mailed after its due date is unrebutted, it must

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

be held that reasonable diligence on the part of the lessee has not been shown.

Iola D. Long, 32 IBLA 333 (Oct. 18, 1977)

A lessee generally has not demonstrated reasonable diligence where the rental payment was postmarked in California the day before it was due in Nevada. An allegation that the payment was mailed prior to the postmark date must be corroborated by sufficient evidence. An assertion that the rental check was mailed 2 days before the due date and allegations of poor service by the local post office are not sufficient alone to overcome the postmark date.

Richard L. Triplett II, 32 IBLA 369 (Oct. 31, 1977)

Ordinarily the postmark date on a letter will be deemed the date of mailing. This inference may be rebutted on showing satisfactory, circumstantial evidence to lend credibility to an earlier date. A letter from postal authorities, acknowledging that a posted pickup schedule erroneously indicated pickups on Sundays and holidays, especially where the letter is accompanied by a photograph of the posted schedule, sufficiently corroborates lessee's contention that he mailed the rental payment prior to a Sunday and Monday holiday to rebut the inference resulting from a postmark of the following Tuesday.

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversay date to account for normal delays in the collections, transmittal, and delivery of the payment considering the distance involved. Where a letter is to be mailed from Brooklyn, New York, to Salt Lake City, Utah, allowing 1 day for delivery demonstrates lack of reasonable diligence, whereas allowing 3 or 4 days generally is diligent.

Edward Malz, 33 IBLA 22 (Nov. 22, 1977)

The timeliness of filing Federal tax returns and payments and of making rental payments for Federal oil and gas leases are governed by different statutes and regulations and are not the same. Receipt in the proper Bureau of Land Management office determines the timeliness of rental payment, whereas the Internal Revenue Service uses a postmark date. The postmark date is relevant in considering a Federal oil and gas lease rental only to determine if the lessee exercised reasonable diligence so as to warrant reinstatement of a lease terminated for failure to pay the rental timely.

In determining whether an oil and gas lessee exercised reasonable diligence to warrant reinstatement of a terminated lease the postmark date on the rental payment envelope is generally deemed the date of mailing unless there is satisfactory evidence to support an assertion that mailing occurred at an earlier date.

Generally, the mailing of a rental payment for an oil and gas lease 1 day before the payment date cannot be

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

considered reasonable diligence to warrant reinstatement of a terminated lease.

Receiving the Bureau of Land Management's courtesy rental due notice too late to meet a lessee's usual business practice for mailing checks is not a justifiable excuse for delay in transmitting the payment to warrant reinstatement of a terminated lease.

The inadvertent or negligent failure of an employee or other person entrusted to mail payments for an oil and gas lessee is not a justifiable excuse for delay in transmitting the payment to warrant reinstatement of a terminated lease. Nor is the fact his prior payments have been timely filed such an excuse.

David R. Smith and Darla L. Smith, 33 IBLA 63 (Dec. 5, 1977)

The standards of reasonable diligence and justifiable delay govern reinstatement of oil and gas leases as well as geothermal leases, and principles established in oil and gas lease reinstatement cases generally govern cases involving reinstatement of geothermal leases as well.

Page T. Jenkins, 33 IBLA 135 (Dec. 19, 1977)

An oil and gas lease terminated for failure to timely pay the annual advance rental can only be reinstated where the lessee shows to the satisfaction of the Secretary, or his delegate, that the failure to timely pay the advance rental was not due to a lack of reasonable diligence, or that such failure was justifiable.

Doris Belnap, 33 IBLA 231 (Dec. 28, 1977)

RENEWALS

A 10-year renewal of a 20-year oil and gas lease expires by its own terms where no timely application for further renewal is made by the lessee. Such lease is not held by production and terminates automatically on its final anniversary date notwithstanding the existence of a producing well on the leasehold.

Peacock Oil Co., Inc., Twin Arrow, Inc., 29 IBLA 74 (Feb. 23, 1977)

A 10-year renewal of a 20-year oil and gas lease expires by its own terms where no timely application for further renewal is made by the lessee, pursuant to 43 CFR 3107.8-2; however, the language of the regulation is permissive and a delay in filing a renewal application may be excused in the presence of special circumstances.

Peacock Oil Co., Inc., Twin Arrow, Inc., 30 IBLA 103 (May 2, 1977)

OIL AND GAS LEASES--Continued

RENEWALS--Continued

A 20-year oil and gas lease which has been renewed for successive 10-year periods, and which at the time of expiration of a 10-year period is committed to an approved unit plan of development, is not entitled to another 10-year renewal, but is extended pursuant to 30 U.S.C. § 226(j) (1970).

Anne Burnett Tandy, et al., 33 IBLA 106 (Dec. 16, 1977)

RENTALS

Where, after a drawing of simultaneously filed oil and gas lease offers, the authorized officer mails a notice to the successful drawee informing him of his priority and the requirement that the advance rental must be paid within the allotted time, which letter is received at his address of record, his subsequent failure to remit the rental timely will disqualify his offer even though he asserts that the person who received and signed for the notice, and then failed to give it to him promptly, was not his designated agent for receipt of mail.

After a drawing of simultaneously filed oil and gas lease offers the requirement that the first year's rental be received in the proper office within the allotted time after notice to the applicant is mandatory, and consideration of excuses for failure to comply is not permitted. Specifically, no relief will be afforded where the delay is attributed to the Postal Service.

Edgar C. Bennington (On Reconsideration), 28 IBLA 355 (Jan. 31, 1977)

The lessee of an oil and gas lease, issued after Sept. 2, 1960, which has reached the end of its primary term, must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1970) on or before the regular anniversary date of the lease. Failure to submit the rental timely will result in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1970). Unless the lessee can show that he is entitled to reinstatement of his lease under 30 U.S.C. § 188(c) (1970), he cannot obtain the extension.

Oil Resources, Inc., 28 IBLA 394 (Feb. 7, 1977)
84 I.D. 91

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn with first priority prior to the specified date.

Raymond N. Joeckel, 29 IBLA 170 (Mar. 14, 1977)

Milton J. Lebsack, 29 IBLA 316 (Mar. 30, 1977)

Doris N. Sterkel, Richard L. Sterkel, 30 IBLA 39 (Apr. 12, 1977)

X O Exploration, Inc., 30 IBLA 209 (May 20, 1977)

OIL AND GAS LEASES--Continued

RENTALS--Continued

Francis L. Hill, 32 IBLA 202 (Sept. 16, 1977)

Thomas G. Fails, et al., 32 IBLA 302 (Sept. 30, 1977)

A late payment of rental due for an oil and gas lease results in termination of the lease, and the lease will not be reinstated, where the lessee relied upon a third party to pay the rental, but no acceptable justification is shown for the delay.

Lynn Schusterman, 29 IBLA 182 (Mar. 18, 1977)

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease on an offer drawn with the first priority at a simultaneous drawing when she fails to pay the first year's rental within 15 days of receipt of the notice that such payment is due.

Where an offer is drawn with first priority in a simultaneous drawing, and the offeror fails to pay the first year's rental timely, her failure to do so cannot be excused because of the asserted delay of the Postal Service.

Carma M. Pooley, 29 IBLA 304 (Mar. 30, 1977)

When an oil and gas lease is in royalty status and acreage containing the well is segregated into a new lease by approval of an assignment, the nonproductive base lease does not terminate for failure to pay rental timely if the Bureau of Land Management does not inform the lessee of the segregation until after the anniversary date of the lease.

Odessa Natural Corp., 30 IBLA 28 (Apr. 11, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn with first priority prior to the effective date of the increase.

Raymond N. Joeckel, et al., 30 IBLA 32 (Apr. 11, 1977)

Karen Cotter, et al., 30 IBLA 88 (Apr. 27, 1977)

Duncan Miller, 30 IBLA 90 (Apr. 27, 1977)

William C. Kirkwood, 31 IBLA 178 (July 5, 1977)

Duncan Miller, 31 IBLA 349 (July 22, 1977)

Fred Goodstein, 32 IBLA 25 (Aug. 31, 1977)

OIL AND GAS LEASES--Continued

RENTALS--Continued

An oil and gas lease is not issued until it is signed by the authorized officer; the acceptance of first year's rental in advance as required by regulation does not create a lease contract. Until lease issuance, the Secretary retains his discretion to lease or not to lease a given tract.

James W. Canon, et al., 1 SEC. 1 (Apr. 15, 1977) 84 I.D. 176

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date.

Jary J. Hunnicutt, et al., 30 IBLA 86 (Apr. 27, 1977)

Where a noncompetitive oil and gas lease is canceled for having been erroneously issued because the lands involved were part of an incorporated city (43 CFR 3101.1-1(a)(3) the Department may return the rentals pursuant to the repayment statute, 43 U.S.C. § 1374 (1970), in appropriate circumstances where the lessees have derived no benefit from the possession of the lease and there are no other factors militating against repayment.

Bruce Anderson, 30 IBLA 118 (May 2, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases to be issued pursuant to the simultaneous filing procedures where the drawing was held prior to the effective date of the rent increase, and leases to be issued for a regular over-the-counter offer where the offer was filed prior to the effective date.

Casey C. Jansen, et al., 30 IBLA 134 (May 12, 1977)

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease on an offer drawn with the first priority at a simultaneous drawing when he fails to pay the first year's rental within 15 days (or the first business day thereafter) of receipt of the notice that such payment is due.

Where an offer is drawn with first priority in a simultaneous drawing, and the offeror fails to pay the first year's rental timely, his failure to do so cannot be excused because of the asserted delay in the postal service.

Jack Koegel, 30 IBLA 143 (May 12, 1977)

OIL AND GAS LEASES--Continued

RENTALS--Continued

Under 30 U.S.C. § 188(c) (1970), the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment of rental, unless the rental payment is tendered at the proper office within 20 days of the due date.

Apostolos Paliombeis, 30 IBLA 153 (May 16, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases to be issued to successful offerors at simultaneous drawings held prior to the effective date of the rate increase.

Melvin R. Hobgood, 30 IBLA 163 (May 18, 1977)

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays. A lessee who mails payment from New York City to Cheyenne, Wyoming, 2 days before the anniversary date is not reasonably diligent.

Rosemary Weaver, et al., 30 IBLA 227 (May 26, 1977)

The lessee of an acquired lands oil and gas lease issued after Sept. 2, 1960, which has reached the end of its primary term, must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1970), on or before the regular anniversary date of the lease. Failure to submit the rental timely will result in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1970). Unless the lessee can show that he is entitled to reinstatement of his lease under 30 U.S.C. § 188(c) (1970), the lease must be deemed to have terminated at the end of its stated term.

Shell Oil Co., 30 IBLA 290 (June 1, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn prior to the effective date of the increase.

Marie A. Fiel, et al., 30 IBLA 308 (June 6, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, even though the lease offers were filed prior to the specified date.

Guy M. Willis, 30 IBLA 344 (June 8, 1977)

OIL AND GAS LEASES--Continued

RENTALS--Continued

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, the increased rate applies to all leases issued after that date, regardless of the date on which the offer to lease was originally submitted.

Wanda C. and William B. Scheidt, et al., 30 IBLA 346 (June 8, 1977)

William S. Schicktanz, 32 IBLA 20 (Aug. 31, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate applies to all leases issued after that date, regardless of the date the offer to lease or drawing entry card was filed.

Duncan Miller, 30 IBLA 350 (June 8, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, even though the lease offer was filed prior to the date of the regulation. The imposition of the increased rate is not discriminatory as it applies to all leases issued after a certain date.

Guy M. Willis, 30 IBLA 373 (June 10, 1977)

The filing of a noncompetitive oil and gas lease offer, prior to acceptance, does not create any right to a lease or legal interest which restricts the discretionary authority of the Secretary of the Interior over lease issuance. Thus, an amended regulation raising the lease rental charge may be applied to lease offers which have been previously filed but not accepted and such action is not violative of the Fifth Amendment.

Barbara A. Joeckel, 30 IBLA 376 (June 10, 1977)

A simultaneous oil and gas offeror is properly disqualified under 43 CFR 3112.4-1 from receiving lease when she fails to pay the first year's rental within 15 days of receipt of the notice that such payment is due.

Where the check submitted in payment of the first year's rental for an oil and gas lease offer is dishonored by the drawee bank due to error on the part of the drawer, the offer is properly rejected in accordance with 43 CFR 3112.4-1.

Karen L. Brown, 31 IBLA 239 (July 12, 1977)

OIL AND GAS LEASES--Continued

RENTALS--Continued

Where it is alleged that a bank erroneously dishonored a check drawn thereon, and an official of the bank admits that the payment was refused by mistake, the error of the bank will not vitiate the otherwise proper payment of rent.

Pauline V. Trigg, John H. Trigg, 31 IBLA 296 (July 22, 1977)

An oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent.

Duncan Miller, 31 IBLA 371 (Aug. 4, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to over-the-counter filing procedures, even though the lease offers were submitted prior to the effective date of the increase.

Brad J. Hays, 31 IBLA 374 (Aug. 5, 1977)

Cecil C. Wall, 32 IBLA 27 (Aug. 31, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases to be issued for a regular over-the-counter offer where the offer was filed prior to the effective date.

Altex Oil Corp., 32 IBLA 18 (Aug. 31, 1977)

Altex Oil Co., 32 IBLA 44 (Sept. 2, 1977)

Altex Oil Corp., 32 IBLA 390 (Nov. 7, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date pursuant to over-the-counter offers or pursuant to the simultaneous filing procedures, even though the offers or entry cards were filed with BLM prior to the specified date.

Bureau of Land Management Instruction Memorandum No. 77-37 outlined a general policy for the assessment of additional rental on oil and gas lease offers pending when the rental rate was increased by regulation, but left to the discretion of the State Offices the particular implementing procedures. Procedures used by a State Office which may be different from other State Offices, but which do not prejudice the offerors' right to receive oil and gas leases if leases are issued on the lands applied for, are not arbitrary and capricious

OIL AND GAS LEASES--Continued

RENTALS--Continued

as to require reversal of the decisions assessing additional rental.

Assuming, arguendo, the applicability of the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. § 553 (1970), to an amendment of 43 CFR 3102.3-2 increasing the rental rate of noncompetitive oil and gas leases, the provisions of the Act were satisfied where the proposed increase was published as proposed rulemaking on Mar. 18, 1976, to be effective July 1, 1976, and final rulemaking was published Jan. 5, 1977, changing the effective date of the rental increase to Feb. 1, 1977.

D. R. Gaither, et al., 32 IBLA 106 (Sept. 12, 1977)

The filing of an application for a noncompetitive oil and gas lease, prior to acceptance, does not create a right to a lease immune from application of a subsequently amended administrative regulation. An increased rental rate is properly applied to an oil and gas lease offer pending before the effective date of the rate change but which has not been accepted prior to that time.

Viola J. Kirkwood, 32 IBLA 199 (Sept. 16, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, even though the lease offers were filed prior to the specified date. The filing of an application for a lease prior to its acceptance does not create a right to a lease which is immune from application of a subsequently amended administrative regulation, nor does administrative delay in the processing of the lease offer preclude proper application of such regulation.

Paul C. Kohlman, 32 IBLA 240 (Sept. 21, 1977)

Increased per acre rental, as directed under Jan. 5, 1977, revision of 43 CFR 3103.3-2(a), is applicable to all noncompetitive oil and gas leases issued after Feb. 1, 1977, including leases for which offers, both simultaneous and over-the-counter, were filed prior to revision of the regulation.

Duncan Miller, et al., 32 IBLA 289 (Sept. 27, 1977)

Reliance on receipt of a courtesy billing notice from the Bureau of Land Management is not a justifiable excuse for reinstatement of an oil and gas lease terminated for failure to pay rental timely. The failure of the Bureau of Land Management to change a lessee's address of record resulting in the lessee not receiving the courtesy notice does not relieve the lessee from the obligation to pay rental timely.

Richard C. Corbyn, 32 IBLA 296 (Sept. 28, 1977)

OIL AND GAS LEASES--Continued

RENTALS--Continued

The oil and gas lessee of record is responsible for paying rental timely and for meeting the reinstatement requirements. The fact that a lessee attempts to assign his lease does not absolve him of the rental and reinstatement requirements until the assignment is approved by the Bureau of Land Management.

Leonard A. J. Tancredi, 32 IBLA 325 (Oct. 11, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn with first priority prior to the effective date of the increase.

Where the Bureau of Land Management issued a decision notifying a successful lease offeror of the increased advanced rental rate from $.50 to $1 per acre as per the regulation change in 43 CFR 3103.3-2, effective Feb. 1, 1977, and no right of appeal was granted from that decision, the offeror was not bound to appeal from that decision in order to preserve his priority status. When the offeror took an appeal from a subsequent decision rejecting the offer, that appeal suspended the effect of both BLM decisions pending the result of the appeal before this Board and upon our affirmation, appellant now will be given 15 days to comply with the original requirements before his offer is rejected.

Paul Landis, 32 IBLA 374 (Oct. 31, 1977)

Where a noncompetitive oil and gas lease is issued to the successful applicant in a drawing of simultaneously filed offers and the lessee's personal check in payment of the first year's rental is returned by the drawee bank as uncollectible, a decision canceling the lease will be affirmed in the absence of a showing of error on the part of the bank.

Norman Monath, 32 IBLA 392 (Nov. 8, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to an over-the-counter offer filed prior to the specified date.

Dean W. Rowell, 33 IBLA 30 (Nov. 22, 1977)

Where the Bureau of Land Management issued a decision notifying a successful drawee in the simultaneous oil and gas filing program of the increased advance rental rate from 50 cents to $1 per acre pursuant to a regulation change effective Feb. 1, 1977, 43 CFR 3103.3-2, and no right of appeal was granted from that decision, the offeror was not bound to appeal from that decision in order to preserve his priority status. When the offeror tock an appeal from a subsequent decision rejecting the offer, that appeal suspended the effect of both BLM decisions pending the result of the appeal before this Board. Payment of the required increased rental

OIL AND GAS LEASES--Continued

RENTALS--Continued

during the appeal period is deemed timely and a lease may issue.

George Gabriel, 33 IBLA 44 (Nov. 25, 1977)

Congress has provided that failure to pay annual rental timely for an oil and gas lease shall cause the lease to terminate automatically by operation of law under 30 U.S.C. § 188(b) (1970). An oil and gas lease is not deemed to have terminated for failure to pay rental timely where, because of misleading communications from the Geological Survey and the Bureau of Land Management, it appeared the lease was in a royalty status and the lessee did not have reason to know that the rental was due.

Davis Oil Co., et al., 33 IBLA 53 (Nov. 25, 1977)

The timeliness of filing Federal tax returns and payments and of making rental payments for Federal oil and gas leases are governed by different statutes and regulations and are not the same. Receipt in the proper Bureau of Land Management office determines the timeliness of rental payment, whereas the Internal Revenue Service uses a postmark date. The postmark date is relevant in considering a Federal oil and gas lease rental only to determine if the lessee exercised reasonable diligence so as to warrant reinstatement of a lease terminated for failure to pay the rental timely.

In determining whether an oil and gas lessee exercised reasonable diligence to warrant reinstatement of a terminated lease the postmark date on the rental payment envelope is generally deemed the date of mailing unless there is satisfactory evidence to support an assertion that mailing occurred at an earlier date.

Generally, the mailing of a rental payment for an oil and gas lease 1 day before the payment date cannot be considered reasonable diligence to warrant reinstatement of a terminated lease.

Receiving the Bureau of Land Management's courtesy rental due notice too late to meet a lessee's usual business practice for mailing checks is not a justifiable excuse for delay in transmitting the payment to warrant reinstatement of a terminated lease.

The inadvertent or negligent failure of an employee or other person entrusted to mail payments for an oil and gas lessee is not a justifiable excuse for delay in transmitting the payment to warrant reinstatement of a terminated lease. Nor is the fact his prior payments have been timely filed such an excuse.

David P. Smith and Darla L. Smith, 33 IBLA 63 (Dec. 5, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, the increased rate applies to all leases

OIL AND GAS LEASES--Continued

RENTALS--Continued

issued after that date, regardless of the date on which the offer to lease was originally submitted.

Vern K. Jones, et al., Esdras K. Hartley, 33 IBLA 74 (Dec. 6, 1977)

Where an oil and gas lease is canceled in part because it was erroneously issued as to that part, there is no authority for the Department to pay to the lessee unrealized anticipated profits or to refund the rental for the portion of the lands retained in the lease. By signing the simultaneous oil and gas drawing card, the offeror agreed to accept a lease for those portions of the tract found by BLM to be available for leasing.

Paul N. Temple, 33 IBLA 98 (Dec. 16, 1977)

An oil and gas lease which is in rental status terminates when the annual advance rental is not properly received in the State Office by the anniversary date of the lease.

Doris Belnap, 33 IBLA 231 (Dec. 28, 1977)

ROYALTIES

"Production." "Production" as used in all Federal oil and gas leases includes all oil and gas withdrawn from a reservoir.

In the absence of a specific statutory bar, such as is found in secs. 18 and 19 of the Mineral Leasing Act of 1920, royalty is due in the "amount or value" of all production from a Federal oil and gas lease, including vented and flared gas and gas or oil leaked, spilled or used in producing operations.

An assessment greater than the normal royalty charge may be required for oil and gas that are wasted.

Response to Feb. 17, 1976, Request from the General Accounting Office: Interpretation of Mineral Leasing Act of 1920, and Outer Continental Shelf Lands Act Royalty Clause, M-36888 (Oct. 4, 1976) 84 I.D. 54

"Production." Oil or gas that is wasted is in a category by itself, distinctly separable from "production," when it is oil or gas that is lost on the surface or in the subsurface through the negligence of the lessee, i.e., without the specific sanction of the supervisor.

The loss through waste to the lessor compensable under 30 CFR 250.20 is either the royalty or the full value and the choice between them is a matter which is committed to the sound exercise of the supervisor's discretion.

Whereas 30 CFR 221.48 and 221.50 clearly indicate the lessee must pay royalty on all production, the lessee is obligated to pay full value on all gas wasted

OIL AND GAS LEASES--Continued

ROYALTIES--Continued

(221.35), and the supervisor has no discretion to collect less than the full value of gas wasted.

Computation of Moneys Due the United States on Oil and Gas Lost as a Result of Pennzoil's Blowout, M-36888 (Supp.) (Jan. 19, 1977) 84 I.D 64

The Oct. 4, 1976, Solicitor's Opinion (M-36888), in effect, found that the Secretary, by permitting exemptions from royalty requirements for oil and gas used for production purposes or unavoidably lost, was alienating the royalty interest of the United States on certain leases without authority to do so.

Court cases indicate that it is in the Secretary's discretion to apply the corrected interpretation of the statutes in the collection of additional royalty retroactively or prospectively based on equitable considerations.

The Secretary is limited in the exercise of this authority only by the rule of estoppel where the application of the corrected interpretation of law threatens to work a serious injustice and if the public's interest would not be unduly damaged by the imposition of estoppel.

Effect of Oct. 4, 1976, Solicitor's Opinion M-36888, M-36888 (Supp. II) (Mar. 9, 1977) 84 I.D. 171

In determining the amount of royalty due to the United States from an oil and gas lease, it is proper for the Geological Survey to use a base value which includes both the purchase price paid for the natural gas plus any additional sum paid by the purchaser of the gas to the seller as consideration for the purchase of gas.

Amoco Production Co., 29 IBLA 234 (Mar. 25, 1977)

The royalty provisions of a State lease validated under sec. 6 of the Outer Continental Shelf Lands Act will govern the determination of the royalty due to the United States.

The royalty provisions on a State of Louisiana 1942 lease form subsequently validated under sec. 6 of the Outer Continental Shelf Lands Act provide either for (1) delivery of royalty oil in kind to the lessor free of expense with delivery understood as being made when the oil has been received by the first purchaser or, (2) at the option of the lessee, payment of the value of the oil, with certain express disallowances, including no deduction for transportation charges. Constructive delivery of in-kind royalty must be authorized and accepted by the lessor to constitute a payment of royalty. The delivery-in-kind provision does not authorize the lessee to act as agent of the United States, and is not applicable where the lessee has not notified Geological Survey of any purported constructive delivery of oil to the first purchaser and Survey has not accepted such constructive delivery. Therefore, the second provision is applicable which expressly precludes deductions of transportation costs.

Superior Oil Co., 31 IBLA 127 (June 30, 1977)

OIL AND GAS LEASES--Continued

ROYALTIES--Continued

Congress has provided that failure to pay annual rental timely for an oil and gas lease shall cause the lease to terminate automatically by operation of law under 30 U.S.C. § 188(b) (1970). An oil and gas lease is not deemed to have terminated for failure to pay rental timely where, because of misleading communications from the Geological Survey and the Bureau of Land Management, it appeared the lease was in a royalty status and the lessee did not have reason to know that the rental was due.

Davis Oil Co., et al., 33 IBLA 53 (Nov. 25, 1977)

STIPULATIONS

The Secretary of the Interior may require an offeror for a noncompetitive oil and gas lease to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to issuance of a lease. A stipulation requiring lessee, at his own expense, to make an inventory of archaeological and historical sites on those areas of the leased lands which he proposes to enter for purposes of exploration or drilling and to agree to reasonable conditions of use designed to protect any valuable sites or objects disclosed by the inventory is reasonable and will be upheld.

Milan S. Papulak, 30 IBLA 220 (May 26, 1977)

The Secretary of the Interior may require offerors for noncompetitive oil and gas leases to accept stipulations reasonably designed to protect environmental and other land use values prior to the issuance of the leases. A stipulation which may require the lessee, at his own expense, to make an inventory of all archaeological, paleontological, and historical sites on those areas of the lease which he proposes to enter for exploration or drilling, and to accept reasonable conditions of use for the protection of such sites and artifacts and which requires the lessee to bear the cost of salvaging all objects of antiquity, is reasonable and will be upheld.

Milan S. Papulak, 31 IBLA 69 (June 23, 1977)

Although the Bureau of Land Management may require such special stipulations as are necessary for the protection of the lands embraced in any lease, proposed special stipulations must be supported by valid reasons which will be weighed by this Department with due regard for the public interest. It is the Bureau's responsibility to impose stipulations which are necessary, appropriate and reasonably related to oil and gas activities, and a stipulation which would forbid the lessee to occupy the surface must be set aside on appeal where BLM fails to provide adequate justification for its imposition and fails to show that it has considered less stringent stipulations.

Neva H. Henderson, 31 IBLA 217 (July 6, 1977)

OIL AND GAS LEASES--Continued

STIPULATIONS--Continued

The Secretary of the Interior may require offerors for noncompetitive oil and gas leases to accept stipulations reasonably designed to protect environmental and other land use values prior to the issuance of the leases. A stipulation which may reguire the lessee, at his own expense, to make an inventory of all archaeological, paleontological, and historical sites on those areas of the lease which he proposes to enter for exploration or drilling, and to accept reasonable conditions of use for the protection of such sites and artifacts and which requires the lessee to bear the cost of salvaging all objects of antiguity, is reasonable and will be upheld.

Duncan Miller, 32 IBLA 322 (Oct. 3, 1977)

The Secretary of the Interior may in his discretion reject any offer to lease public lands for oil and gas upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the Mineral Leasing Act. Where part of the lands applied for are in the Bonneville Salt Flats, and the Bureau of Land Management determines that oil and gas leasing activities are not compatible with the primary management objective to prevent irreparable damage to a significant resource, rejection of the lease offers or the requirement of execution of surface occupancy stipulations will be affirmed.

Vern K. Jones, et al., Esdras K. Hartley, 33 IBLA 74 (Dec. 6, 1977)

The Bureau of Land Management may reguire the execution of special stipulations, including a no-surface-occupancy stipulation, to protect environmental and other land use values, as a condition for issuing an oil and gas lease. Where the Bureau of Land Management, in a decision requiring a no-surface-occupancy stipulation along a proposed wild and scenic river corridor, has considered all information available to it, has adequately weighed the factors involved, and the appellant has not shown sufficient reason to change the result, the decision will be upheld.

Questa Petroleum Co., 33 IBLA 116 (Dec. 16, 1977)

Where, rather than delay action on an oil and gas lease offer pending a wilderness review and management decision pursuant to sec. 603 of the Federal Land Policy and Management Act, the Bureau of Land Management proposes to issue the lease immediately subject to a "no surface occupancy" stipulation under the apparently mistaken impression that the applicant had so requested, the decision will be set aside and action on the lease offer will be deferred until a final decision can be made.

Dell K. Hatch and Amoco Production Co., 33 IBLA 138 (Dec. 19, 1977)

OIL AND GAS LEASES--Continued

TERMINATION

The lessee of an oil and gas lease, issued after Sept. 2, 1960, which has reached the end of its primary term, must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1970), on or before the regular anniversary date of the lease. Failure to submit the rental timely will result in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1970). Unless the lessee can show that he is entitled to reinstatement of his lease under 30 U.S.C. § 188(c) (1970), he cannot obtain the extension.

The provisions of 30 U.S.C. §§ 188(b) and (c) (1970), and decisions of the Board discussing those provisions, are generally applicable to both competitive and noncompetitive oil and gas leases on which there is no well capable of producing oil or gas in paying quantities.

"Cancellation" and "termination." The "cancellation" and the "termination" of oil and gas leases are separate, distinct concepts. Cancellation requires a specific act by the Department authorized by various statutes. Termination under 30 U.S.C. § 188(b) (1970), is automatic, occurring by operation of law when the lessee fails to pay his rental timely.

Oil Resources, Inc., 28 IBLA 394 (Feb. 7, 1977)
84 I.D. 91

Where the fact that a bank improperly dishonored a check drawn thereon is not corroborated by an official of the bank until after the State Office issued its decision adverse to oil and gas lessee, the decision will be set aside and the case remanded for further consideration in light of the bank's admission of error.

Gretchen Capital, Ltd., 29 IBLA 247 (Mar. 25, 1977)

Reliance upon receipt of a courtesy notice can neither prevent the lease from terminating by operation of law nor serve to justify a failure to pay the lease rental timely.

Energy Reserve, Inc., 30 IBLA 11 (Apr. 4, 1977)

When an oil and gas lease is in royalty status and acreage containing the well is segregated into a new lease by approval of an assignment, the nonproductive base lease does not terminate for failure to pay rental timely if the Bureau of Land Management does not inform the lessee of the segregation until after the anniversary date of the lease.

Odessa Natural Corp., 30 IBLA 28 (Apr. 11, 1977)

An oil and gas lease is extended by operation of law for 2 years beyond the expiration of its primary term when actual drilling operations were commenced on the lease (or for the lease under a unit plan) prior to the expiration of the primary term and such operations are being diligently prosecuted on the expiration date,

OIL AND GAS LEASES--Continued

TERMINATION--Continued

even though the lease may also have production at that time.

Rio Blanco Natural Gas Co., 30 IBLA 191 (May 19, 1977) 84 I.D. 198

The lessee of an acquired lands oil and gas lease issued after Sept. 2, 1960, which has reached the end of its primary term, must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1970), on or before the regular anniversary date of the lease. Failure to submit the rental timely will result in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1970). Unless the lessee can show that he is entitled to reinstatement of his lease under 30 U.S.C. § 188(c) (1970), the lease must be deemed to have terminated at the end of its stated term.

Shell Oil Co., 30 IBLA 290 (June 1, 1977)

The Board of Land Appeals will entertain and grant a motion by the Bureau of Land Management to remand an oil and gas lease case on appeal to the Board from a decision holding the lease had terminated and denying a petition to reinstate the lease, where BLM discovered, while the case was on appeal, that its decision was predicated on an erroneous factual basis in that annual rental for the lease had actually been paid on time, but the check had been misplaced by BLM and was later found.

Kathryn A. Dalton, 31 IBLA 1 (June 15, 1977)

A prerequisite of the reinstatement process is the tender of payment within 20 days of the anniversary date which protects the right of the lessee to petition for reinstatement. The check is then deposited in an unearned account to create a record of it, and bring it under accounting control, however, depositing of the check does not create an estoppel against the Government.

Adolph F. Muratori, 31 IBLA 39 (June 21, 1977)

An oil and gas lease in its extended term by reason of production terminates by operation of law when it is determined that the lease no longer has a well capable of production in paying quantities and no reworking or drilling operations are begun within 60 days after cessation of production. In this situation the lessee is not entitled to written notice and 60 days to place the well in a producing status.

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented

OIL AND GAS LEASES--Continued

TERMINATION--Continued

evidence raising an issue of fact regarding the status of the well.

Universal Resources Corp., et al., 31 IBLA 61 (June 23, 1977)

Where it is alleged that a bank erroneously dishonored a check drawn thereon, and an official of the bank admits that the payment was refused by mistake, the error of the bank will not vitiate the otherwise proper payment of rent.

Pauline V. Trigg, John H. Trigg, 31 IBLA 296 (July 22, 1977)

Congress has provided that failure to pay annual rental timely for an oil and gas lease shall cause the lease to terminate automatically by operation of law under 30 U.S.C. § 188(b) (1970). An oil and gas lease is not deemed to have terminated for failure to pay rental timely where, because of misleading communications from the Geological Survey and the Bureau of Land Management, it appeared the lease was in a royalty status and the lessee did not have reason to know that the rental was due.

Davis Oil Co., et al., 33 IBLA 53 (Nov. 25, 1977)

The standards of reasonable diligence and justifiable delay govern reinstatement of oil and gas leases as well as geothermal leases, and principles established in oil and gas lease reinstatement cases generally govern cases involving reinstatement of geothermal leases as well.

Page T. Jenkins, 33 IBLA 135 (Dec. 19, 1977)

An oil and gas lease which is in rental status terminates when the annual advance rental is not properly received in the State Office by the anniversary date of the lease.

Doris Belnap, 33 IBLA 231 (Dec. 28, 1977)

TWENTY-YEAR LEASES

A 10-year renewal of a 20-year oil and gas lease expires by its own terms where no timely application for further renewal is made by the lessee. Such lease is not held by production and terminates automatically on its final anniversary date notwithstanding the existence of a producing well on the leasehold.

Peacock Oil Co., Inc., Twin Arrow, Inc., 29 IBLA 74 (Feb. 23, 1977)

OIL AND GAS LEASES--Continued

TWENTY-YEAR LEASES--Continued

A 10-year renewal of a 20-year oil and gas lease expires by its own terms where no timely application for further renewal is made by the lessee, pursuant to 43 CFR 3107.8-2; however, the language of the regulation is permissive and a delay in filing a renewal application may be excused in the presence of special circumstances.

Peacock Oil Co., Inc., Twin Arrow, Inc., 30 IBLA 103 (May 2, 1977)

A 20-year oil and gas lease which has been renewed for successive 10-year periods, and which at the time of expiration of a 10-year period is committed to an approved unit plan of development, is not entitled to another 10-year renewal, but is extended pursuant to 30 U.S.C. § 226(j) (1970).

Anne Burnett Tandy, et al., 33 IBLA 106 (Dec. 16, 1977)

UNIT AND COOPERATIVE AGREEMENTS

Unleased Federal lands ordinarily are not committed to unit agreements unless by a specific action of a duly authorized officer of the Department, and a tract of such land is not committed to a unit agreement in spite of the fact that the tract is included in the area described in sec. 2 of the agreement as the unit area, is shown on the map attached to the agreement as Exhibit A to be within the boundaries of the unit area, and is shown on Exhibit B of the agreement as being unleased Federal land.

High Crest Oils, Inc. (now Tricentrol United States, Inc., Through Change of Name), 29 IBLA 97 (Feb. 23, 1977)

A Bureau of Land Management decision extending the lease term of an oil and gas lease for 2 years following the termination of the unit agreement of which the lease was a part is premature, where the lessee has appealed the Geological Survey's determination of the effective date of termination of the unit agreement. The Bureau of Land Management decision will be set aside and the case remanded to await the final outcome of the lessee's appeal of the Geological Survey determination.

Tenneco Oil Co., 29 IBLA 157 (Mar. 7, 1977)

A determination of an Area Oil and Gas Supervisor, Geological Survey, that a subsequent joinder could not effectuate commitment of an oil and gas lease to a unit agreement prior to expiration of the lease is properly set aside by the Director, Geological Survey, as not being within the authority of the Area Oil and Gas Supervisor to determine.

An oil and gas lessee, who files the necessary subsequent joinder documents with the Area Oil and Gas Supervisor, Geological Survey, in accordance with the subsequent joinder procedures outlined in the unit agreement, will have his lease committed to the unit as of the date of filing with the Area Oil and Gas Supervisor for the purpose of extension of the lease on the basis

OIL AND GAS LEASES--Continued

UNIT AND COOPERATIVE AGREEMENTS--Continued

of production within the unit. However, the commitment does not become effective for determining the benefits and obligations under the unit agreement, as to the parties to the agreement, until the first day of the month following the filing.

Bruce Anderson, 30 IBLA 179 (May 19, 1977)

An oil and gas lease is extended by operation of law for 2 years beyond the expiration of its primary term when actual drilling operations were commenced on the lease (or for the lease under a unit plan) prior to the expiration of the primary term and such operations are being diligently prosecuted on the expiration date, even though the lease may also have production at that time.

Rio Blanco Natural Gas Co., 30 IBLA 191 (May 19, 1977) 84 I.D. 198

By the terms of the mineral leasing laws, unit agreement, and by regulation, unitized oil and gas leases issued after Sept. 2, 1960, which reach the end of a 2-year extended term by drilling expire by operation of law if there is not production of oil or gas in paying quantities within the unit at that time.

The U.S. Geological Survey is the technical expert of the Department of the Interior in matters concerning geologic evaluations. The Bureau of Land Management is entitled to rely on mineral determinations of Survey, such as qualification of a test well as a discovery well defined by a unit agreement, in the absence of a clear and definite showing of error.

Corrine Grace, 30 IBLA 296 (June 1, 1977)

A 20-year oil and gas lease which has been renewed for successive 10-year periods, and which at the time of expiration of a 10-year period is committed to an approved unit plan of development, is not entitled to another 10-year renewal, but is extended pursuant to 30 U.S.C. § 226(j) (1970).

Anne Burnett Tandy, et al., 33 IBLA 106 (Dec. 16, 1977)

WELL CAPABLE OF PRODUCTION

An oil and gas lease in its extended term by reason of production terminates by operation of law when it is determined that the lease no longer has a well capable of production in paying quantities and no reworking or drilling operations are begun within 60 days after cessation of production. In this situation the lessee is not entitled to written notice and 60 days to place the well in a producing status.

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented

OIL AND GAS LEASES--Continued

WELL CAPABLE OF PRODUCTION--Continued

evidence raising an issue of fact regarding the status of the well.

Universal Resources Corp., et al., 31 IBLA 61 (June 23, 1977)

OREGON AND CALIFORNIA RAILROAD AND RECONVEYED COOS BAY GRANT LANDS

SUSTAINED YIELD UNITS

Where one objects to the Bureau of Land Management's decision to offer a certain tract of timber for sale on the grounds that an environmental impact statement for the single planned timber sale has not been prepared and that such a sale would violate the sustained yield provisions of the O&C Act of Aug. 28, 1937, 43 U.S.C. § 1181a (1970), the Bureau decision will be upheld when the objecting party fails to provide any evidence to support its contentions and a program environmental impact statement for the sustained yield unit which includes the parcel in question is in the process of being prepared.

Headwaters, 33 IBLA 91 (Dec. 16, 1977)

OUTER CONTINENTAL SHELF LANDS ACT
(See also Oil and Gas Leases.)

GENERALLY

In order to constitute a clear and definite offer, a bid for an outer continental shelf oil and gas lease must adequately identify the tract which is the subject of the bid.

It is not the responsibility of Bureau of Land Management employees to decipher ambiguous bids for outer continental shelf oil and gas leases in order to save the bidder from the consequences of his own negligence. A bid which was apparently intended for one tract and contains data appropriate for that tract, but identifies a different tract as the subject of the bid, is properly considered, and rejected as too low, for the identified tract.

A rejected bid in an outer continental shelf oil and gas lease sale may be reconsidered and accepted when it is in the public interest to do so. The essential elements in allowing such a reconsideration are the fairness and impartiality of the sale toward all bidders. In a situation where a bid was initially rejected as too low for the tract identified in the bid and the bidder immediately requests reconsideration because he intended to bid for a different tract, where the tract number stated in the bid corresponds to the block number of the intended tract, where all other relevant data in the bid corresponds to the intended tract and only to the intended tract, and where no other person submitted a bid for the intended tract, it is proper to reconsider the bid to determine if it is in the public interest to accept the bid for the intended tract.

Alaska Oil and Minerals Corp., 29 IBLA 224 (Mar. 23, 1977) 84 I.D. 114

OUTER CONTINENTAL SHELF LANDS ACT--Continued

OIL AND GAS LEASES

"Production." "Production" as used in all Federal oil and gas leases includes all oil and gas withdrawn from a reservoir.

In the absence of a specific statutory bar, such as is found in secs. 18 and 19 of the Mineral Leasing Act of 1920, royalty is due in the "amount or value" of all production from a Federal oil and gas lease, including vented and flared gas and gas or oil leaked, spilled or used in producing operations.

An assessment greater than the normal royalty charge may be required for oil and gas that are wasted.

Response to Feb. 17, 1976, Request from the General Accounting Office: Interpretation of Mineral Leasing Act of 1920, and Outer Continental Shelf Lands Act Royalty Clause, M-36888 (Oct. 4, 1976) 84 I.D. 54

"Production." Oil or gas that is wasted is in a category by itself, distinctly separable from "production," when it is oil or gas that is lost on the surface or in the subsurface through the negligence of the lessee, i.e., without the specific sanction of the supervisor.

The loss through waste to the lessor compensable under 30 CFR 250.20 is either the royalty or the full value and the choice between them is a matter which is committed to the sound exercise of the supervisor's discretion.

Computation of Moneys Due the United States on Oil and Gas Lost as a Result of Pennzoil's Blowout, M-36888 (Supp.) (Jan. 19, 1977) 84 I.D. 64

The interpretation of the Mineral Leasing Act of 1920 set forth in the Oct. 4, 1976, Solicitor's Opinion (M-36888) is compelled by the statute.

Terms of an oil and gas lease inconsistent with the statute are equally as invalid as a regulation which operates to create a rule out of harmony with the statute.

A lessee gains no rights through a lease which could not be bestowed lawfully, since regulations or lease terms inconsistent with the statute are invalid.

The involuntary invalidation of a lease term does not amount to pro tanto cancellation of the lease.

The Oct. 4, 1976, Solicitor's Opinion (M-36888), in effect, found that the Secretary, by permitting exemptions from royalty requirements for oil and gas used for production purposes or unavoidably lost, was alienating the royalty interest of the United States on certain leases without authority to do so.

Court cases indicate that it is in the Secretary's discretion to apply the corrected interpretation of the statutes in the collection of additional royalty retroactively or prospectively based on equitable considerations.

The Secretary is limited in the exercise of this authority only by the rule of estoppel where the application of the corrected interpretation of law threatens

OUTER CONTINENTAL SHELF LANDS ACT--Continued

OIL AND GAS LEASES--Continued

to work a serious injustice and if the public's interest would not be unduly damaged by the imposition of estoppel.

Effect of Oct. 4, 1976, Solicitor's Opinion M-36888, M-36888 (Supp. II) (Mar. 9, 1977) 84 I.D. 171

STATE LEASES

Generally

The royalty provisions of a State lease validated under sec. 6 of the Outer Continental Shelf Lands Act will govern the determination of the royalty due to the United States.

The royalty provisions on a State of Louisiana 1942 lease form subsequently validated under sec. 6 of the Outer Continental Shelf Lands Act provide either for (1) delivery of royalty oil in kind to the lessor free of expense with delivery understood as being made when the oil has been received by the first purchaser or, (2) at the option of the lessee, payment of the value of the oil, with certain express disallowances, including no deduction for transportation charges. Constructive delivery of in-kind royalty must be authorized and accepted by the lessor to constitute a payment of royalty. The delivery-in-kind provision does not authorize the lessee to act as agent of the United States, and is not applicable where the lessee has not notified Geological Survey of any purported constructive delivery of oil to the first purchaser and Survey has not accepted such constructive delivery. Therefore, the second provision is applicable which expressly precludes deductions of transportation costs.

Superior Oil Co., 31 IBLA 127 (June 30, 1977)

PATENTS OF PUBLIC LANDS

GENERALLY

The Secretary of the Interior is not authorized to issue a patent to a mining claim until he is satisfied that the requirements of the law have been met.

United States v. Fred and Eileen Garner, 30 IBLA 42 (Apr. 18, 1977)

In determining what land is conveyed under patents or grants of public land bordering a meandered watercourse, the general rule is that the waterline itself, not the meander line, constitutes the boundary. There is an exception where the meander line may constitute the boundary between lands omitted from the survey and the watercourse if fraud or gross error is shown in the survey. This exception is only applicable to limit the boundary of the surveyed lots on the side of the watercourse where the omitted land is shown. It does not apply to a lot on the opposite side of the watercourse from the omitted land so as to pass title to the omitted land with title to the lot on the opposite side.

PATENTS OF PUBLIC LANDS--Continued

GENERALLY--Continued

The waterline would remain the actual boundary of that lot.

Mable M. Farlow, 30 IBLA 320 (June 7, 1977) 84 I.D. 276

EFFECT

The effect of the issuance of a patent, even if issued by mistake or inadvertence, is to transfer the legal title from the United States and to remove from the jurisdiction of this Department the consideration of all disputed questions concerning rights to the land.

Fernie M. Rogers, 29 IBLA 192 (Mar. 18, 1977)

RESERVATIONS

In a patent to public domain land, a reservation for ditches and canals constructed by authority of the United States, pursuant to the Act of Aug. 30, 1890, need not be modified by a reference to the Act of Sept. 2, 1964, as amended, 43 U.S.C. § 945a (1970).

Heirs of Carrie Bethel, 29 IBLA 210 (Mar. 22, 1977)

PAYMENTS
(See also Accounts.)

GENERALLY

The authorized officer may not deem an oil and gas rental payment to have been timely filed, pursuant to 43 CFR 1821.2-2(g) if it is received at the State Office when it is not open to the public, even though the payment is presented on the last day in which payment can be made. Such payment is deemed to have been made on the day and hour the office is next open to business, as provided in 43 CFR 1821.2-2(d).

It is proper to deny a petition for reinstatement of an oil and gas lease terminated for failure to pay rental on time as required by sec. 31 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 188(b) (1970), where 20 minutes before the State Office closes to the public on the last day on which rental can be paid, petitioner instructs by telephone an agent who lives in the vicinity of the State Office to make the payment and the agent who alleges she was delayed by traffic and security measures makes payment after the office is closed to the public. In such circumstances the petitioner has not shown that his failure to pay the rental on or before the anniversary date of the lease was justifiable or not due to a lack of reasonable diligence.

Bob Burch, 32 IBLA 93 (Sept. 12, 1977)

PAYMENTS--Continued

GENERALLY--Continued

Where an oil and gas lease is canceled in part because it was erroneously issued as to that part, there is no authority for the Department to pay to the lessee unrealized anticipated profits or to refund the rental for the portion of the lands retained in the lease. By signing the simultaneous oil and gas drawing card, the offeror agreed to accept a lease for those portions of the tract found by BLM to be available for leasing.

Paul N. Temple, 33 IBLA 98 (Dec. 16, 1977)

REFUNDS

Where an oil and gas lease is canceled in part because it was erroneously issued as to that part, there is no authority for the Department to pay to the lessee unrealized anticipated profits or to refund the rental for the portion of the lands retained in the lease. By signing the simultaneous oil and gas drawing card, the offeror agreed to accept a lease for those portions of the tract found by BLM to be available for leasing.

Paul N. Temple, 33 IBLA 98 (Dec. 16, 1977)

PHOSPHATE LEASES AND PERMITS

PERMITS

A prospecting permit for phosphate cannot be issued for land subject to a claim. If a prospecting permit for phosphate purports to cover land subject to a mining claim, it is invalid as to that land. Consequently, in demonstrating a discovery of a valuable deposit of phosphate in land subject to a prospecting permit, the permittee must exclude any phosphate in land covered by a mining claim.

The Effect of Mining Claims on Secretarial Authority to Issue Prospecting Permits for Coal and Phosphate, M-36893 (Aug. 2, 1977) 84 I.D. 442

POWER SITE LANDS

Where prior to 1920 a powersite withdrawal was created by executive order under authority of the Act of June 25, 1910, the withdrawn land remained open to the location of mining claims for metalliferous minerals until passage of the Federal Power Act on June 10, 1920, which closed powersites to all entry, location or disposal. Any mining claim located thereafter on powersite lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act or the location of the claim has been made in accordance with the Act of Aug. 11, 1955, 30 U.S.C. § 621 (1970). The latter Act did not operate retroactively to validate void claims.

Henry Stagnaro, 31 IBLA 357 (July 25, 1977)

PUBLIC LANDS
(See also Boundaries, Surveys of Public Lands.)

GENERALLY

Lands which have been designated by the Act of Aug. 13, 1949, as public domain are not leasable under the Mineral Leasing Act for Acquired Lands or Reorganization Plan No. 3 of 1946, even though they may have been acquired lands prior to the Act of Aug. 13, 1949. A prospecting permit for uranium on such lands will be denied.

John R. Meadows, 30 IBLA 14 (Apr. 4, 1977)

The Secretary of the Interior may cause to be made such resurveys or retracements of the rectangular system of surveys of public lands as he may deem essential to mark the boundaries of the remaining public lands.

Frank Lujan, 30 IBLA 95 (Apr. 29, 1977)

Under the Supremacy Clause, U.S. Const., art. VI, cl. 2, Federal laws, including Federal grazing regulations, override conflicting State laws with respect to public lands.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

A geothermal lease application is properly rejected to the extent that it includes land which has been reconveyed to the United States but which has only been opened to applications under the nonmineral public land laws.

Chevron Oil Co., 32 IBLA 275 (Sept. 27, 1977)

ADMINISTRATION

The administrative treatment of land as reservation land under the jurisdiction of the Bureau of Indian Affairs for many purposes is not dispositive of the status of the land in the face of clear legislation demonstrating that it was absolutely ceded, even without conflicting administrative treatment of the lands as public domain or under the jurisdiction of the Reclamation Service. The Department has the authority to resolve disputes and correct errors in the status of lands within its jurisdiction.

Title to Certain Land Within the Boundaries of the Fort Yuma Indian Reservation as Established by the Executive Order of Jan. 9, 1884, M-36886 (Jan. 18, 1977) 84 I.D. 1

CLASSIFICATION

The statement by the BLM State Office that appellant's petition-application is regular on its face is merely a preliminary determination the application will be considered and the process will be set in motion to classify the land. The decision to classify land for

PUBLIC LANDS--Continued

CLASSIFICATION--Continued

a certain purpose is discretionary with the Secretary of the Interior.

Arthur R. Wallace, 30 IBLA 239 (May 31, 1977)

A petition-application for a homestead entry outside of Alaska requires classification of the land, confers no rights upon an applicant and must be rejected because the Federal Land Policy and Management Act repealed the homestead laws effective on the date of the Act as to lands outside Alaska.

Daniel A. Anderson, 31 IBLA 162 (July 1, 1977)

When lands have been classified under a final order of the Secretary of the Interior as being unsuitable for disposal under the desert land laws, a desert land entry petition-application will not be allowed.

Rulon Van Tassel, 33 IBLA 221 (Dec. 22, 1977)

JURISDICTION OVER

Where BLM has issued a clear list giving a State title to lands selected as indemnity for lost school lands but erroneously reserving to the United States geothermal rights to these selected lands, these geothermal rights are still within the power of the United States to dispose of, and the Department still exercises jurisdiction over them, so that the Board of Land Appeals may correct BLM's error by ordering that these rights be given to the State by deleting the reservation thereof in the clear list.

State of California, 33 IBLA 160 (Dec. 20, 1977)

LEASES AND PERMITS

Where the State Office, following a recommendation of the National Park Service rejects an application for an oil and gas lease in the Lake Mead National Recreation Area on the basis of a general environmental review of the consequences of oil and gas leasing in the Recreation Area, but which does not specifically show that the lands involved are of a particular value in the Recreation Area as a whole and that leasing subject to stipulations will not suffice to protect the recreation and other values of the land, the case will be remanded for a particular application of the environmental review to that land.

Robert R. Wahl, Howard Yee, 28 IBLA 305 (Jan. 13, 1977)

Lands which have been designated by the Act of Aug. 13, 1949, as public domain are not leasable under the Mineral Leasing Act for Acquired Lands or Reorganization Plan No. 3 of 1946, even though they may have been acquired lands prior to the Act of Aug. 13, 1949. A

PUBLIC LANDS--Continued

LEASES AND PERMITS--Continued

prospecting permit for uranium on such lands will be denied.

John R. Meadows, 30 IBLA 14 (Apr. 4, 1977)

Under 30 U.S.C. § 262 (1970), a valuable deposit of sodium must be leased competitively even though the Geological Survey determination that lands are so known may have been made subsequent to appellant's filing of its application.

Permian Mud Service, Inc., 31 IBLA 150 (June 30, 1977) 84 I.D. 342

Until such time as the Department promulgates regulations, policy guidelines or criteria implementing sec. 302 of the Federal Land Policy and Management Act of 1976, the Bureau of Land Management may properly defer action on the proposed creation of an estate in Federal land thereunder.

Treva L. Berger, 31 IBLA 389 (Aug. 19, 1977)

RIPARIAN RIGHTS

In determining what land is conveyed under patents or grants of public land bordering a meandered watercourse, the general rule is that the waterline itself, not the meander line, constitutes the boundary. There is an exception where the meander line may constitute the boundary between lands omitted from the survey and the watercourse if fraud or gross error is shown in the survey. This exception is only applicable to limit the boundary of the surveyed lots on the side of the watercourse where the omitted land is shown. It does not apply to a lot on the opposite side of the watercourse from the omitted land so as to pass title to the omitted land with title to the lot on the opposite side. The waterline would remain the actual boundary of that lot.

Mable M. Farlow, 30 IBLA 320 (June 7, 1977) 84 I.D. 276

SPECIAL USE PERMITS

Where the declared administrative policy is to refuse permission for geophysical exploration on lands controlled by sec. 17(d)(1) of the Alaska Native Claims Settlement Act and the subject lands are under consideration for possible inclusion in the national forest system, a decision refusing such permission will be affirmed.

Shell Oil Co., 28 IBLA 378 (Feb. 4, 1977)

A special use permit for commercial passenger carrying river-trip operations may be denied renewal for non-use or reduced for incomplete use over a 2-year period and only use during the crucial high season may be counted in determining usage if the permit so provides. However, where the program is recent and permittees are not fully familiar with its operations, and all the

PUBLIC LANDS--Continued

SPECIAL USE PERMITS--Continued

requirements for maintaining the permit are not immediately apparent, a permittee may be given some leeway before his permit is denied renewal.

Wilderness River Outfitters and Trail Expeditions, Inc., 30 IBLA 148 (May 16, 1977)

A special recreation use permit for commercial boat operations may be denied renewal for nonuse over a 2-year period of any allocated passenger days under a properly noticed "use or lose" policy. However, where the permit program is relatively recent and administrative techniques are not fully reliable, and where the appellant documents on appeal some use of its allocation during the 2-year period, the permit should not be denied renewal under the "use or lose" policy.

Canyoneers, Inc., 30 IBLA 354 (June 9, 1977)

Under the Federal Land Policy and Management Act of 1976 and interim guidelines issued pursuant thereto, special use permit applications for access roads over public land are properly processed as right-of-way applications. 43 U.S.C. § 1761. The Bureau of Land Management correctly denies such an application where it has determined, in conformance with the Act and interim guidelines, that an access road would neither be in the public interest nor facilitate land management policy.

Edwin L. Rumpf, Jr., 31 IBLA 367 (Aug. 1, 1977)

The issuance of a special use permit is discretionary, and the Bureau of Land Management properly exercises that discretion where it denies permits for three of four ORV events on the ground that lack of funds, time, and manpower would impede processing of applications and preclude preparation of the requisite environmental analysis records.

Baja Motor Sports, 32 IBLA 142 (Sept. 12, 1977)

PUBLIC RECORDS
(See also Administrative Procedure.)

The notation on public records of the Bureau of Land Management of a request for withdrawal has a segregative effect on land included in a mining location, so that in a contest proceeding, the claimants must show that they had made a discovery of a valuable mineral deposit before the time of posting of the withdrawal application.

United States v. John L. Maley and James F. Pagel, 29 IBLA 201 (Mar. 22, 1977)

Where material involving a prior mineral reservation on acquired lands is first submitted on appeal, and the effect of a State statute and State court decree is in issue, it is appropriate to remand the case to the BLM State Office for further consideration.

A. N. Henderson, 30 IBLA 8 (Apr. 4, 1977)

PUBLIC RECORDS--Continued

Where a mining claim is located on lands at a time when the official records of the Bureau of Land Management showed such lands to be subject to a proposed withdrawal from operation of the mining laws, that mining claim is null and void ab initio.

Jack D. Canon, et al., 30 IBLA 112 (May 2, 1977)

Publication in the Federal Register of a notice of proposed classification pursuant to 43 CFR 2461.2 will segregate the affected land to the extent indicated in the notice.

United States v. R. E. Rodgers and Barbara J. Rodgers, 32 IBLA 77 (Sept. 2, 1977)

Land is segregated from entry under the mining laws when a proposed withdrawal of the lands from mineral entry is noted on the official records of the Bureau of Land Management and a mining claim located after that time is null and void ab initio.

William J. Smith, Sr., et al., 33 IBLA 47 (Nov. 25, 1977)

PUBLIC SALES

GENERALLY

Although the Federal Land Policy and Management Act, 43 U.S.C.A. § 1701 et seq. (West Supp. 1977), repealed the Isolated Tract Act, 43 U.S.C. § 1171 (1970), where a public sale was held prior to Oct. 21, 1976, with the decision to hold the sale fully supported by land use plans, and there is an explicit finding that disposal criteria of the Federal Land Policy and Management Act have been met, final certificate and patent may be issued to the highest preference-right bidder pursuant to 43 CFR 2711.4 et seq.

L. A. Gillette, 33 IBLA 182 (Dec. 21, 1977)

APPLICATIONS

An application to purchase public land filed pursuant to the Unintentional Trespass Act, 43 U.S.C. §§ 1431-1435 (1970), is properly rejected as to two of the three tracts sought when the Geological Survey reports that such lands are underlain with coal; that a coal company holds coal prospecting permits for such lands and intends to mine the coal if leases issue; and that exercise of surface rights would unreasonably interfere with operations under the Mineral Leasing Act of 1920. In addition, the public interest dictates rejection of the application as to such tracts because conveyance of the surface rights could allow the surface owner, pursuant to the Wyoming Environmental Quality Act of 1973, to prevent strip mining of the underlying coal by withholding his consent to mine.

Edward H. Swartz, 31 IBLA 210 (July 6, 1977)

PUBLIC SALES--Continued

PREFERENCE RIGHTS

As between two preference-right applicants for land offered at public sale under the Isolated Tract Act, 43 U.S.C. § 1171 (1970), departmental regulation 43 CFR 2711.4(b)(2) continues in effect pursuant to 43 U.S.C.A. §§ 1713, 1740 (West Supp. 1977) and is strictly construed with regard to the deadline for making the required showing of fee title to contiguous land.

L. A. Gillette, 33 IBLA 182 (Dec. 21, 1977)

SALES UNDER SPECIAL STATUTES

An application to purchase public land filed pursuant to the Unintentional Trespass Act, 43 U.S.C. §§ 1431-1435 (1970), is properly rejected as to two of the three tracts sought when the Geological Survey reports that such lands are underlain with coal; that a coal company holds coal prospecting permits for such lands and intends to mine the coal if leases issue; and that exercise of surface rights would unreasonably interfere with operations under the Mineral Leasing Act of 1920. In addition, the public interest dictates rejection of the application as to such tracts because conveyance of the surface rights could allow the surface owner, pursuant to the Wyoming Environmental Quality Act of 1973, to prevent strip mining of the underlying coal by withholding his consent to mine.

Edward H. Swartz, 31 IBLA 210 (July 6, 1977)

RAILROAD GRANT LANDS

Pursuant to sec. 321(b) of the Transportation Act of 1940, 49 U.S.C. § 65(b) (1970), patent may be issued for grant lands sold by the railroad if either (1) the land was not mineral in character between the time of the alleged grant to the railroad and the time of the sale or (2) although the land was mineral in character the purchaser was not, at the time of sale, chargeable with actual or constructive notice of that fact.

To establish the mineral character of railroad grant lands under the Act of July 1, 1862 (12 Stat. 489), as amended, it must be shown that known conditions--which may include geological conditions, discoveries of minerals in adjacent land and other observable external conditions upon which prudent and experienced men are known to be accustomed to act--on the critical date are such as reasonably to engender the belief that the land contains mineral of such quality and in such quantity as to render its extraction profitable and justify expenditures to that end.

When the Department of the Interior finds that public land within the place limits of a grant to a railroad under the Act of July 1, 1862, as amended, was mineral in character and the railroad company, filing for patent on behalf of an alleged bona fide purchaser from it, challenges such finding, a hearing should be granted at which the Department has the obligation of

RAILROAD GRANT LANDS--Continued

making a prima facie case of mineral character, whereupon the company has the burden of establishing nonmineral character by a preponderance of the evidence, and the bona fides of the purchaser.

Southern Pacific Transportation Co., 32 IBLA 218 (Sept. 19, 1977)

RECLAMATION LANDS

GENERALLY

Sec. 25 of the Act of Apr. 21, 1904, which authorized the application of the Reclamation Act of 1902 to the Yuma Indian Reservation, did not repeal by implication sec. 17 of the Act of Aug. 15, 1894, which provided for the cession, reclamation and allotment of the Reservation, and is in no way inconsistent with the 1894 Act.

Title to Certain Land Within the Boundaries of the Fort Yuma Indian Reservation as Established by the Executive Order of Jan. 9, 1884, M-36886 (Jan. 18, 1977)
84 I.D. 1

RECREATION AND PUBLIC PURPOSES ACT

A recreation and public purposes application must be rejected for lands temporarily withdrawn for an irrigation project to benefit Indians. Such a withdrawal is effective until specifically revoked, even though it is made on a temporary basis and has been in effect for more than 50 years.

Elko County Board of County Supervisors, 29 IBLA 220 (Mar. 23, 1977)

REGULATIONS
(See also Administrative Procedure.)

GENERALLY

An oil and gas lease offer must be rejected as to lands applied for which are held in trust for Indians and are not available under the Mineral Leasing Act. Even though the minerals in these lands have been reserved to the United States, mineral development is not possible at this time because the language of the exchange act under which the lands were acquired requires further promulgation of special regulations by the Secretary as a condition precedent to such development.

Thomas D. Chace, 31 IBLA 13 (June 17, 1977)

Until such time as the Department promulgates regulations, policy guidelines or criteria implementing sec. 302 of the Federal Land Policy and Management Act of 1976, the Bureau of Land Management may properly defer action on the proposed creation of an estate in Federal land thereunder.

Treva L. Berger, 31 IBLA 389 (Aug. 19, 1977)

REGULATIONS--Continued

GENERALLY--Continued

The promulgation or revocation of a regulation is within the special authority of the Secretary of the Interior and a limited number of delegates. A regulation when promulgated is binding upon departmental officials.

The requirement in the Administrative Procedure Act, 5 U.S.C. § 553(d) (1970), that the required publication of a substantive rule be made not less than 30 days before its effective date is satisfied by publication of proposed rulemaking with a 30-day comment period, followed thereafter by final rulemaking. Minor changes in a final rule from the proposed rule do not require new proposed rulemaking.

Assuming, arguendo, the applicability of the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. § 553 (1970), to an amendment of 43 CFR 3102.3-2 increasing the rental rate of noncompetitive oil and gas leases, the provisions of the Act were satisfied where the proposed increase was published as proposed rulemaking on Mar. 18, 1976, to be effective July 1, 1976, and final rulemaking was published Jan. 5, 1977, changing the effective date of the rental increase to Feb. 1, 1977.

D. R. Gaither, et al., 32 IBLA 106 (Sept. 12, 1977)

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

Verner F. Sorenson, 32 IBLA 341 (Oct. 21, 1977)

Sec. 310 of the Federal Land Policy and Management Act of 1976 provides that, prior to promulgation of new regulations, the Secretary will administer the public lands under existing regulations to the extent practical. Issuance of a right-of-way permit for an electrical power transmission line prior to the promulgation of new regulations under sec. 504 of the Act is permissible under the authority in sec. 310.

The fact that various of the existing regulations in 43 CFR Part 2800, governing issuance of rights-of-way, are not wholly consistent with the Federal Land Policy Management Act of 1976 does not render invalid a BLM decision granting a right-of-way under the authority of sec. 310 of that Act.

David Smith Ranches, et al. (Appellants), Colorado Ute Electric Assoc., Inc. (Intervenor), 33 IBLA 7 (Nov. 15, 1977)

APPLICABILITY

Where a regulation is amended in a way that benefits an oil and gas lessee, the Department may, in the absence of intervening rights of third parties or prejudice to the interests of the United States, apply the amendment to pending cases.

Howard S. Bugbee, 29 IBLA 30 (Feb. 8, 1977)

REGULATIONS--Continued

APPLICABILITY--Continued

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subseguent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn with first priority prior to the specified date.

Raymond N. Joeckel, 29 IBLA 170 (Mar. 14, 1977)

Milton J. Lebsack, 29 IBLA 316 (Mar. 30, 1977)

Doris N. Sterkel, Richard L. Sterkel, 30 IBLA 39 (Apr. 12, 1977)

X O Exploration, Inc., 30 IBLA 209 (May 20, 1977)

Francis L. Hill, 32 IBLA 202 (Sept. 16, 1977)

Thomas G. Fails, et al., 32 IBLA 302 (Sept. 30, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subseguent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn with first priority prior to the effective date of the increase.

Raymond N. Joeckel, et al., 30 IBLA 32 (Apr. 11, 1977)

Karen Cotter, et al., 30 IBLA 88 (Apr. 27, 1977)

Duncan Miller, 30 IBLA 90 (Apr. 27, 1977)

William C. Kirkwood, 31 IBLA 178 (July 5, 1977)

Duncan Miller, 31 IBLA 349 (July 22, 1977)

Fred Goodstein, 32 IBLA 25 (Aug. 31, 1977)

Paul Landis, 32 IBLA 374 (Oct. 31, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subseguent to that date.

Jary J. Hunnicutt, et al., 30 IBLA 86 (Apr. 27, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subseguent to that date, including leases to be issued pursuant to the simultaneous filing procedures where the drawing was held prior to the effective date of the rent increase, and leases to be issued for a regular over-the-counter offer where the offer was filed prior to the effective date.

Casey C. Jansen, et al., 30 IBLA 134 (May 12, 1977)

REGULATIONS--Continued

APPLICABILITY--Continued

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases to be issued to successful offerors at simultaneous drawings held prior to the effective date of the rate increase.

Melvin R. Hobgood, 30 IBLA 163 (May 18, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn prior to the effective date of the increase.

Marie A. Fiel, et al., 30 IBLA 308 (June 6, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, even though the lease offers were filed prior to the specified date.

Guy M. Willis, 30 IBLA 344 (June 8, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, the increased rate applies to all leases issued after that date, regardless of the date on which the offer to lease was originally submitted.

Wanda C. and William B. Scheidt, et al., 30 IBLA 346 (June 8, 1977)

William S. Schicktanz, 32 IBLA 20 (Aug. 31, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate applies to all leases issued after that date, regardless of the date the offer to lease or drawing entry card was filed.

Duncan Miller, 30 IBLA 350 (June 8, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, even though the lease offer was filed prior to the date of the regulation. The imposition of the increased rate is not discriminatory as it applies to all leases issued after a certain date.

Guy M. Willis, 30 IBLA 373 (June 10, 1977)

REGULATIONS--Continued

APPLICABILITY--Continued

The filing of a noncompetitive oil and gas lease offer, prior to acceptance, does not create any right to a lease or legal interest which restricts the discretionary authority of the Secretary of the Interior over lease issuance. Thus, an amended regulation raising the lease rental charge may be applied to lease offers which have been previously filed but not accepted and such action is not violative of the Fifth Amendment.

Barbara A. Joeckel, 30 IBLA 376 (June 10, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases to be issued for a regular over-the-counter offer where the offer was filed prior to the effective date.

Altex Oil Corp., 32 IBLA 18 (Aug. 31, 1977)

Altex Oil Co., 32 IBLA 44 (Sept. 2, 1977)

Altex Oil Corp., 32 IBLA 390 (Nov. 7, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date pursuant to over-the-counter offers or pursuant to the simultaneous filing procedures, even though the offers or entry cards were filed with BLM prior to the specified date.

D. R. Gaither, et al., 32 IBLA 106 (Sept. 12, 1977)

The filing of an application for a noncompetitive oil and gas lease, prior to acceptance, does not create a right to a lease immune from application of a subsequently amended administrative regulation. An increased rental rate is properly applied to an oil and gas lease offer pending before the effective date of the rate change but which has not been accepted prior to that time.

Viola J. Kirkwood, 32 IBLA 199 (Sept. 16, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, even though the lease offers were filed prior to the specified date. The filing of an application for a lease prior to its acceptance does not create a right to a lease which is immune from application of a subsequently amended administrative regulation, nor does administrative delay in the processing of the lease offer preclude proper application of such regulation.

Paul C. Kohlman, 32 IBLA 240 (Sept. 21, 1977)

REGULATIONS--Continued

APPLICABILITY--Continued

Increased per acre rental, as directed under Jan. 5, 1977, revision of 43 CFR 3103.3-2(a), is applicable to all noncompetitive oil and gas leases issued after Feb. 1, 1977, including leases for which offers, both simultaneous and over-the-counter, were filed prior to revision of the regulation.

Duncan Miller, et al., 32 IBLA 289 (Sept. 27, 1977)

The filing of an application for modification of an existing coal lease does not give rise to a vested property right. Thus, such an application qualifies as neither a valid existing right excepted from application of the acreage limit on lease modifications set by the Federal Coal Leasing Amendments Act of 1975 nor a right protected by the Fifth Amendment from application of subsequently amended statutes or regulations.

Nevada Electric Investment Co., 33 IBLA 3 (Nov. 14, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to an over-the-counter offer filed prior to the specified date.

Dean W. Rowell, 33 IBLA 30 (Nov. 22, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, the increased rate applies to all leases issued after that date, regardless of the date on which the offer to lease was originally submitted.

Vern K. Jones, et al., Esdras K. Hartley, 33 IBLA 74 (Dec. 6, 1977)

FORCE AND EFFECT AS LAW

The Bureau of Land Management should suspend consideration of the applications under the Carey Act pending Departmental action to revise and recodify previously deleted regulations which provide guidance for the administration of the Carey Act.

Idaho Department of Water Resources, 32 IBLA 89 (Sept. 2, 1977)

INTERPRETATION

As between two preference-right applicants for land offered at public sale under the Isolated Tract Act, 43 U.S.C. § 1171 (1970), departmental regulation 43 CFR 2711.4(b)(2) continues in effect pursuant to 43 U.S.C.A. §§ 1713, 1740 (West Supp. 1977) and is strictly construed with regard to the deadline for

REGULATIONS--Continued

INTERPRETATION--Continued

making the required showing of fee title to contiguous land.

L. A. Gillette, 33 IBLA 182 (Dec. 21, 1977)

WAIVER

Where an applicant for grazing privileges does not show the type of misconduct which would be a basis for estoppel against the Government, the provisions of 43 CFR 4115.2-1(e)(9)(i) and (e)(13)(i) cannot be waived on the basis of such misconduct.

A. D. Findlay (Appellant), Vermillion Cliff Cattle Co. (Intervenor), 29 IBLA 262 (Mar. 25, 1977)

The failure of a noncompetitive oil and gas lease offeror to complete the date on the simultaneous oil and gas drawing entry card is not excused, and the Department is not estopped to reject such an offer, by his reliance on the Department's prior erroneous issuance of a lease in acceptance of an offer which was deficient for the same reason.

Tina A. Regan, 33 IBLA 213 (Dec. 21, 1977)

REINSTATEMENT

GENERALLY

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays. A lessee whose payment is mailed 6 days after the due date is not reasonably diligent.

Extenuating circumstances outside the control of the lessee occurring near the anniversary date of the lease may constitute justifiable cause for a late rental payment where the circumstances are the proximate cause of the failure to make timely payment. However, where appellant has entrusted payment to an agent who becomes ill, and a subagent, who assumes the agent's responsibilities neglects to make payment timely, the illness of the agent is not the proximate cause of the late payment where no connection is made between the date of the agent's illness and the due date of the rental and a decision denying reinstatement will be affirmed.

The burden of proving that the late payment was either justifiable or not due to a lack of reasonable diligence is on the lessee, and this burden includes showing the proximity of the occurrence to the anniversary date.

Lucyann W. Cameron, 29 IBLA 141 (Mar. 4, 1977)

REINSTATEMENT--Continued

GENERALLY--Continued

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays. A lessee whose payment is mailed more than 16 days after the due date is not reasonably diligent.

Energy Reserve, Inc., 30 IBLA 11 (Apr. 4, 1977)

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays. Where payment is mailed 3 days after the anniversary date and where due to a combination of trips in other vehicles, farm chores, and simple inadvertence, it was left on a car seat for 4 days, the failure to exercise reasonable diligence is not justifiable because the factor causing the delay is not one which is ordinarily outside of the control of the lessee.

Hildred W. Bernthal, Shirley M. Bernthal, 30 IBLA 18 (Apr. 7, 1977)

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays. Instances of forgetfulness, simple inadvertence or ignorance of the regulations are not covered. Where payment is mailed from Binghamton, New York, to Salt Lake City, Utah, 1 day before the anniversary date the lessee cannot be said to be reasonably diligent.

An estoppel of the Government to refuse acceptance of late rental payments is not created where in the past the BLM accepted rental payments after the anniversary date pursuant to 43 CFR 3103.3-2(e)(1) providing if the office to receive payment is closed on the anniversary date, payment will be considered timely if received on the next official working day.

Adolph F. Muratori, 31 IBLA 39 (June 21, 1977)

RES JUDICATA

A request to reconsider a 1968 decision by the Department rejecting final proof for a homestead entry and canceling the entry is properly rejected in the absence of a showing of "extraordinary circumstances." In the absence of compelling legal or equitable reasons for reconsideration, the principle of res judicata, and its counterpart, finality of administrative action, will operate to bar consideration of a new appeal arising from a later proceeding involving the same claim and the same issues.

Pekka K. Merikallio, 30 IBLA 157 (May 18, 1977)

Where a State swampland selection has been rejected on the ground that the land selected has been disposed of, but in fact that land was available to the State, the judgment is valid and binding until set aside. Since the Secretary has jurisdiction to determine whether the land selected is available, he has jurisdiction to decide erroneously. The erroneous decision will not be

RES JUDICATA--Continued

set aside where the State did not appeal and the decision has remained unchallenged for over 100 years, the State itself sold the land to a color of title applicant's predecessor, and an adverse right has intervened.

John Stuart Hunt, Sherman M. Hunt, 31 IBLA 304 (July 22, 1977) 84 I.D. 421

In order for a State to receive legal title to a swampland selection, the Secretary of the Interior or his delegate must determine that the land is swamp in character and available for disposition under the grant. An erroneous decision that selected land is unavailable because it was sold prior to the selection is valid and binding until set aside. The erroneous decision will not be set aside where the State did not appeal and the decision has remained unchallenged for over 100 years, the State itself sold the land at a tax sale to the predecessor in interest of a color of title applicant, and an adverse right, i.e., a class 2 color of title application, has intervened.

White Castle Lumber and Shingle Co., Ltd., 32 IBLA 129 (Sept. 12, 1977)

The doctrine of finality of administrative action, counterpart of res judicata, designed to achieve orderliness in the administration of public lands, bars reconsideration of a 1936 General Land Office decision, rendered according to procedures then in effect, which canceled a stock-raising homestead entry and from which no appeal was taken.

John Lynn Brough, 33 IBLA 36 (Nov. 25, 1977)

RIGHTS-OF-WAY
(See also Indian Lands, Outer Continental Shelf Lands Act, Reclamation Lands.)

GENERALLY

Public land within one-quarter mile of the banks of a river designated by Act of Congress for potential addition to the national wild and scenic rivers system is withdrawn by statute from entry, sale, or other disposition under the public land laws of the United States for a designated period to allow a study of the suitability of the river for inclusion in the system and a report to Congress thereon. This withdrawal, however, does not preclude a right-of-way grant which does not involve a conveyance of title or rights leading thereto.

The Secretary has the discretionary authority to grant a right-of-way application which includes an area designated for potential addition to the national wild and scenic rivers system where it is determined to be in the public interest. In the exercise of that discretion it is appropriate to consider the suitability of the subject area for inclusion in the system, classification of the characteristics (wild, scenic, or recreational) of the river area, and whether such a land use will unreasonably interfere with the values disclosed.

Lower Valley Power & Light, Inc., 29 IBLA 107 (Feb. 23, 1977)

RIGHTS-OF-WAY--Continued

GENERALLY--Continued

Where a right-of-way application has been rejected in part, an appeal therefrom should be dismissed if not filed within the period prescribed in 43 CFR 4.411.

When a right-of-way applicant fails to submit corrected maps and payment of charges within a reasonable time after notice, which notice does not prescribe a specific time therefor, but on appeal applicant explains the reasons for delay, a rejection of the application may be set aside and the case remanded.

Jerrold R. Cooley, Lucy M. Cooley, 32 IBLA 387 (Nov. 7, 1977)

Sec. 310 of the Federal Land Policy and Management Act of 1976 provides that, prior to promulgation of new regulations, the Secretary will administer the public lands under existing regulations to the extent practical. Issuance of a right-of-way permit for an electrical power transmission line prior to the promulgation of new regulations under sec. 504 of the Act is permissible under the authority in sec. 310.

The fact that various of the existing regulations in 43 CFR Part 2800, governing issuance of rights-of-way, are not wholly consistent with the Federal Land Policy Management Act of 1976 does not render invalid a BLM decision granting a right-of-way under the authority of sec. 310 of that Act.

Sec. 505, Federal Land Policy and Management Act of 1976, does not require that preliminary planning considerations be enumerated on the face of a grant of a right-of-way.

The third party participation provision of sec. 102(a)(5), Federal Land Policy and Management Act of 1976, is entirely satisfied by a series of public hearings held prior to the grant of a power transmission right-of-way.

David Smith Ranches, et al. (Appellants), Colorado Ute Electric Assoc., Inc. (Intervenor), 33 IBLA 7 (Nov. 15, 1977)

An applicant has no right to a hearing in connection with original Federal charges for use and occupancy of a communication site, and in the absence of any specific assertion showing error in the appraisal, the appraisal will be sustained on appeal if it is properly formulated.

When a parcel of land is properly determined to have a highest and best use for communication site purposes, an annual use charge based on the fair-market value of the right-of-way grant may be determined by comparisen with value of the right of use for similar sites and by making whatever adjustments may be necessary because of differences in factors influencing value.

Under sec. 310 of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. $ 1764(g) (West Supp. 1977), charges for rights-of-way on public lands are in general to be paid annually rather than in advance for a longer period pursuant to 43 CFR 2802.1-7(a).

XYZ Television, Inc., 33 IBLA 80 (Dec. 8, 1977)

RIGHTS-OF-WAY--Continued

ACT OF MARCH 3, 1891

The grantee of a right-of-way for irrigation or drainage purposes may not fence the right-of-way unless it is necessary to protect the grantee's use. Where the necessity of protecting an irrigation reservoir from incursion by cattle did not appear on the record, and the fence was not so located as to serve that purpose, fencing the reservoir constituted a trespass.

Joe Stewart, 33 IBLA 225 (Dec. 28, 1977)

ACT OF FEBRUARY 15, 1901

A right-of-way issued pursuant to the Act of Feb. 15, 1901, for the construction, maintenance, and operation of a water tank site, water pipeline, and an access road is properly canceled where the permittee has not completed construction within 5 years from the date of the grant.

Neil J. Cummins, 32 IBLA 384 (Nov. 3, 1977)

ACT OF MARCH 4, 1911

A right-of-way for a communication site for which application was made under the Act of Mar. 4, 1911, shall conform to the provisions of the Federal Land Policy and Management Act of 1976, sec. 510, 90 Stat. 2743, 2782, when application for grant was pending on Oct. 21, 1976.

Where the current fair rental value of a right-of-way has been determined in accordance with accepted appraisal procedures, and the permittee contends that the rental is excessive, the burden is upon the lessee to prove by positive, substantial evidence that the appraisal is in error. Where the lessee fails to do so, the appraisal will stand.

Four States Television, Inc., 32 IBLA 205 (Sept. 19, 1977)

Under 43 CFR 2802.1-7(e), the charge for a right-of-way on public lands may be revised upon compliance with procedural requirements at any time 5 years or more from the date when the rate was initially established.

XYZ Television, Inc., 32 IBLA 317 (Sept. 30, 1977)

APPLICATIONS

Under existing regulations, no amended right-of-way application need be filed in connection with a change in the broadcast frequency of a microwave communications station where such change does not require any deviation from the location of a prior subsisting right-of-way grant.

American Telephone and Telegraph Co., 32 IBLA 338 (Oct. 18, 1977)

RIGHTS-OF-WAY--Continued

CANCELLATION

A right-of-way issued pursuant to the Act of Feb. 15, 1901, for the construction, maintenance, and operation of a water tank site, water pipeline, and access road is properly canceled where the permittee has not completed construction within 5 years from the date of the grant.

Neil J. Cummins, 32 IBLA 384 (Nov. 3, 1977)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

A right-of-way for a communication site for which application was made under the Act of Mar. 4, 1911, shall conform to the provisions of the Federal Land Policy and Management Act of 1976, sec. 510, 90 Stat. 2743, 2782, when application for grant was pending on Oct. 21, 1976.

Where the current fair rental value of a right-of-way has been determined in accordance with accepted appraisal procedures, and the permittee contends that the rental is excessive, the burden is upon the lessee to prove by positive, substantial evidence that the appraisal is in error. Where the lessee fails to do so, the appraisal will stand.

Four States Television, Inc., 32 IBLA 205 (Sept. 19, 1977)

NATURE OF INTEREST GRANTED

The grantee of a right-of-way for irrigation or drainage purposes may not fence the right-of-way unless it is necessary to protect the grantee's use. Where the necessity of protecting an irrigation reservoir from incursion by cattle did not appear on the record, and the fence was not so located as to serve that purpose, fencing the reservoir constituted a trespass.

Joe Stewart, 33 IBLA 225 (Dec. 28, 1977)

RULES OF PRACTICE
(See also Appeals, Contests and Protests, Contracts, Federal Coal Mine Health and Safety Act of 1969, Hearings, Indian Probate.)

GENERALLY

The fact that the contest regulations may not contain a specific provision providing for the assertion of affirmative defenses or counterclaims in an answer to a contest complaint does not necessarily bar an Administrative Law Judge from consideration of the substance of such assertions.

United States v. Jerry L. Crow, 28 IBLA 345 (Jan. 24, 1977)

RULES OF PRACTICE--Continued

GENERALLY--Continued

A mining claim is properly declared null and void where the Government establishes a prima facie case of lack of discovery, and the contestee does not show by a preponderance of the evidence that a discovery has been made.

United States v. Chester L. Ramsey, 29 IBLA 243 (Mar. 25, 1977)

A Bureau of Land Management decision, dismissing an answer to contest complaints filed in behalf of individual contestees and a company, and holding mining claims null and void because it appeared the company did not own the claims and because the answer was filed in behalf of the individual contestees by someone not authorized to practice in their behalf, will be vacated where on appeal it is shown that within the time for filing the answer the claims had been transferred to the company. There is no need to dismiss the contest and initiate a new contest against the company since a timely answer has been filed in its behalf; instead, the complaints should be amended to substitute the company as the contestee and party in interest and the contest proceeding should go forward against it.

Sharon K. Milazzo, et al., 33 IBLA 57 (Dec. 5, 1977)

APPEALS

Generally

An appeal to the Board of an automatic termination of an oil and gas lease will be dismissed as not ripe where appellant sends the appeal to the Board before a Notice of Termination of Lease has been issued and a Petition for Reinstatement rejected by the State Office, Bureau of Land Management.

Read & Stevens, Inc.; Franklin, Aston & Fair, Ltd.; and Colorado Interstate Gas Co., 29 IBLA 154 (Mar. 4, 1977)

A Bureau of Land Management decision extending the lease term of an oil and gas lease for 2 years following the termination of the unit agreement of which the lease was a part is premature, where the lessee has appealed the Geological Survey's determination of the effective date of termination of the unit agreement. The Bureau of Land Management decision will be set aside and the case remanded to await the final outcome of the lessee's appeal of the Geological Survey determination.

Tenneco Oil Co., 29 IBLA 157 (Mar. 7, 1977)

The thrust of 43 CFR 4.410, which limits the right to appeal to those who are parties to a case, is not to restrict access to administrative review of actions of Bureau of Land Management officials, but to provide a logical framework within which such review might be exercised. An "appeal" by an individual or group which has not, prior to the "appeal," participated in the formulation of the action to which objection is being

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

voiced, should be treated as a protest under the provisions of 43 CFR 4.450-2.

California Assoc. of Four Wheel Drive Clubs, et al.
30 IBLA 383 (June 10, 1977)

The Board of Land Appeals will entertain and grant a motion by the Bureau of Land Management to remand an oil and gas lease case on appeal to the Board from a decision holding the lease had terminated and denying a petition to reinstate the lease, where BLM discovered, while the case was on appeal, that its decision was predicated on an erroneous factual basis in that annual rental for the lease had actually been paid on time, but the check had been misplaced by BLM and was later found.

Kathryn A. Dalton, 31 IBLA 1 (June 15, 1977)

Where a State swampland selection has been rejected on the ground that the land selected has been disposed of, but in fact that land was available to the State, the judgment is valid and binding until set aside. Since the Secretary has jurisdiction to determine whether the land selected is available, he has jurisdiction to decide erroneously. The erroneous decision will not be set aside where the State did not appeal and the decision has remained unchallenged for over 100 years, the State itself sold the land to a color of title applicant's predecessor, and an adverse right has intervened.

John Stuart Hunt, Sherman M. Hunt, 31 IBLA 304 (July 22, 1977) 84 I.D. 421

Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. A decision made in the exercise of that discretion must contain such a statement of reasons in support of the decision as will establish that the discretion has been exercised in a manner that is neither arbitrary nor capricious. Review on the issue of abuse of discretion is limited to an inquiry whether the statement of reasons establishes a rational and defensible basis for the decision below.

Andrew H. L. Anderson, et al., 32 IBLA 123 (Sept. 12, 1977)

When a right-of-way applicant fails to submit corrected maps and payment of charges within a reasonable time after notice, which notice does not prescribe a specific time therefor, but on appeal applicant explains the reasons for delay, a rejection of the application may be set aside and the case remanded.

Jerrold R. Cooley, Lucy M. Cooley, 32 IBLA 387 (Nov. 7, 1977)

RULES OF PRACTICE--Continued

APPEALS--Continued

Answers

Motion for quantum hearing will be allowed when the Government admitted liability on certain claims in the Answer and the first hearing was limited to entitlement.

Appeal of Scona, Inc., IBCA-1094-1-76 (Dec. 28, 1977) 84 I.D. 1019

Burden of Proof

A first category differing site conditions claim based on the encountering of subsurface waterlines not shown on the contract drawings in the vicinity of a fish hatchery building is denied, where the Board finds that except for the unsupported allegations of the contractor there is nothing in the record to indicate that the experienced subcontractor who performed required excavation in the area where the buried waterlines were located failed to anticipate the conditions he actually encountered.

Although a first category differing site conditions claim is established by the presence of a septic tank in an area where the plans indicate a sewage treatment plant was slated to go, a contractor's claim based thereon is denied where the evidence shows that the location of the sewage treatment plant was changed before any significant amount of work was done in the area where the septic tank was located.

Appeal of William Lagnion (Contractor), IBCA-1083-10-75 (Jan. 5, 1977)

While the burden of showing an excusable cause of delay to exist is on the construction contractor, the invoking of this rule presupposes that the Government will leave this responsibility with the contractor, or, if it undertakes to correspond directly with the subcontractors or suppliers concerning delays experienced, it will inform them of the criteria set forth in the contract for establishing an excusable cause of delay.

Appeal of The J. C. Hester Co., Inc., IBCA-1114-7-76 (Jan. 14, 1977)

A claim for extra work is denied where the appellant does not even undertake to show why the work was considered to be beyond the requirements of the contract.

Appeals of Willie H. Petterson, IBCA-1115-7-76, IBCA-1116-7-76, IBCA-1117-7-76 and IBCA-1118-7-76 (Feb. 28, 1977)

In prosecuting an appeal the burden of proof is upon appellant to establish by credible evidence that it is entitled to an equitable adjustment.

Appeal of Halvorson-Lents (A Joint Venture), IBCA-1059-2-75 (Mar. 3, 1977)

RULES OF PRACTICE--Continued

APPEALS--Continued

Burden of Proof--Continued

Surveys of the United States, after acceptance, are presumed to be correct and will not be disturbed except upon clear proof that they are fraudulent or grossly erroneous. An appellant challenging a Government resurvey has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey.

Frank Lujan, 30 IBLA 95 (Apr. 29, 1977)

Under a contract requiring contractor to provide all necessary material, equipment and labor, the contractor's admission that it did not have adequate equipment or an efficient work force, as well as a lack of experience in the work required to be performed does not meet the burden of proof to justify an extension of time.

Appeal of Scona, Inc., IBCA-1094-1-76 (May 6, 1977)

A mining claimant must prove a discovery under the prudent man test, including that the mineral can be extracted, removed and marketed at a profit.

United States v. Pittsburgh Pacific Co., 30 IBLA 388 (June 15, 1977) 84 I.D. 282

Claimant has the burden of proof of extra work and failed to establish that in placing utility lines the actual work performed differed from contractually required work.

Appeal of Rocky Mountain Construction Co., IBCA-1091-12-75 (Aug. 17, 1977) 84 I.D. 829

An appeal is dismissed as untimely when it was not filed within 30 days of the date on which the contracting officer's final decision was received by a person who was not employed by the appellant but who was authorized to receive his mail during the 6 weeks the appellant was away on vacation. While the appellant denied that such person was authorized to sign a return receipt for certified mail, the Board noted that no question of authority to sign for certified mail had been raised in the contractor's letter requesting an extension in the time for filing the appeal and that no such question was raised until the Government's motion to dismiss the instant appeal was filed.

Appeal of Harry Claterbos Co. JV, IBCA-1153-5-77 (Dec. 6, 1977) 84 I.D. 969

When the contract requires the pipe to be laid in a trench 18 inches in depth measured from the center line of the pipe to the top of the ground line or on top of the ground with 18 inches of cover if rock strata is encountered, the contractor cannot sustain an allegation of a constructive change when the Government insists the requirements be followed and objects

RULES OF PRACTICE--Continued

APPEALS--Continued

Burden of Proof--Continued

to contractor laying the pipe in a trench less than 18 inches in depth.

Appeal of Underground Utility Services, IBCA-1047-11-74, IBCA-1089-11-75 (Dec. 28, 1977)

Discovery

A mining claim is properly declared null and void where the Government establishes a prima facie case of lack of discovery, and the contestee does not show by a preponderance of the evidence that a discovery has been made.

United States v. Wayne E. Highley, 30 IBLA 21 (Apr. 7, 1977)

The parties are entitled to discover all documents not privileged which are reasonably likely to lead to admissible evidence and do not cause a burden disproportionate to the probable benefit from the requested discovery taking into account the size of the claims involved and their nature as well as the nature of the defenses.

Appeal of Airco, Inc., IBCA-1074-8-75 (Oct. 17, 1977) 84 I.D. 838

Dismissal

A contractor's claim for additional costs attributed to the Government's delay in requesting contemplated installation services under a contract calling for the furnishing of governors for hydraulic turbines is dismissed for want of jurisdiction where the Board finds that the claim asserted is not redressable under the Changes clause of Standard Form 32 (Supply Contract) or under the special Suspension of Deliveries (or Services) clause which reserves to the Government the right to suspend services and preserves the contractor's right to make claim therefor but fails to provide that any costs attributable to such suspension shall be recoverable by way of an adjustment to the contract price.

Appeal of Cheston Co., IBCA-1093-1-76 (Nov. 19, 1976) 84 I.D. 924

An appeal to the Board of an automatic termination of an oil and gas lease will be dismissed as not ripe where appellant sends the appeal to the Board before a Notice of Termination of Lease has been issued and a Petition for Reinstatement rejected by the State Office, Bureau of Land Management.

Read & Stevens, Inc.; Franklin, Aston & Fair, Ltd.; and Colorado Interstate Gas Co., 29 IBLA 154 (Mar. 4, 1977)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed.

Duncan Miller, 29 IBLA 174 (Mar. 14, 1977)

Where an appellant withdraws an appeal, the appeal must be dismissed.

Where a decision by a Bureau of Land Management official is interlocutory in nature and the appellant fails to show any reason why the decision is in error, or should not be implemented, a purported appeal from such a decision must be dismissed.

Elko County Board of County Supervisors, 29 IBLA 220 (Mar. 23, 1977)

An appeal taken by a subcontractor in its own name is dismissed where the Board finds the subcontractor has no standing to invoke the provisions of the Disputes Clause as a means of securing an adjudication by the Board of the rights and obligations of the contesting parties.

An appeal is dismissed where the prime contractor has stated that nothing will be done to further an appeal taken by a subcontractor in its own name and the Board finds that the action of the prime contractor in giving the Government written notice of a potential claim of changed conditions by the subcontractor and any statements made by the prime contractor endorsing the potential claim at the time such notice was given are not a sufficient basis upon which to ground jurisdiction over the appeal.

Appeal of Divide Constructors, Inc., Subcontractor to Granite Construction Co., IBCA-1134-12-76 (Mar. 29, 1977) 84 I.D. 119

An appeal to the Board of Land Appeals will be dismissed where the enactment of legislation renders moot the questions on appeal.

Gibbonsville Townsite, 30 IBLA 74 (Apr. 18, 1977)

An appeal to the Board of Land Appeals will be dismissed where the enactment of the Federal Land Policy and Management Act renders moot the questions on appeal.

Silver Peak Townsite (Trustee), 30 IBLA 357 (June 10, 1977)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

The Government's motion to dismiss an appeal because of the failure of the contractor to give the 20-day written notice required by the Changes clause is denied, where the Board finds that there was timely notice with respect to some of the costs on which the claim is based and that the hearing to be held may show that some or all of the remaining costs fall within other recognized exceptions to the strict application of the 20-day cost-limitation provision.

Appeal of Hartford Accident and Indemnity Co., IBCA-1139-1-77 (June 23, 1977) 84 I.D. 296

Where a right-of-way application has been rejected in part, an appeal therefrom should be dismissed if not filed within the period prescribed in 43 CFR 4.411.

Jerrold R. Cooley, Lucy M. Cooley, 32 IBLA 387 (Nov. 7, 1977)

A Government motion to dismiss an appeal is denied where the ground for the motion is that the contractor failed to raise its allegations before the contracting officer prior to filing its appeal but the Board finds that the contracting officer did have an opportunity to pass upon the principal allegations of the contractor prior to rendering his decision.

Appeal of Briles Wing & Helicopter, Inc., IBCA-1158-7-77 (Dec. 2, 1977) 84 I.D. 967

An appeal is dismissed as untimely when it was not filed within 30 days of the date on which the contracting officer's final decision was received by a person who was not employed by the appellant but who was authorized to receive his mail during the 6 weeks the appellant was away on vacation. While the appellant denied that such person was authorized to sign a return receipt for certified mail, the Board noted that no question of authority to sign for certified mail had been raised in the contractor's letter requesting an extension in the time for filing the appeal and that no such question was raised until the Government's motion to dismiss the instant appeal was filed.

A motion to dismiss an appeal is granted when the appellant had failed to file an appeal within 30 days of the date on which the contracting officer's final decision was received. Respecting the contractor's argument that the 30-day time limit should be waived, the Board noted that the right to extend the time for filing a notice of appeal had been specifically excepted from the grant of authority to the Board as set forth in the regulations governing Board proceedings.

Appeal of Harry Claterbos Co. JV, IBCA-1153-5-77 (Dec. 6, 1977) 84 I.D. 969

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

Where appellant's allegations on appeal are immaterial and irrelevant and appellant fails to establish any error in the decision below or any infringement of appellant's rights, the appeal is properly dismissed as lacking in merit.

Duncan Miller, 33 IBLA 83 (Dec. 8, 1977)

Effect of

Notice of appeal of all issues in a contracting officer's decision puts all the issues contained therein "at issue" before the IBCA until the parties state the issues then in dispute in the Complaint and Answer.

Appeal of Scona, Inc., IBCA-1094-1-76 (Dec. 28, 1977) 84 I.D. 1019

Extensions of Time

While the burden of showing an excusable cause of delay to exist is on the construction contractor, the invoking of this rule presupposes that the Government will leave this responsibility with the contractor, or, if it undertakes to correspond directly with the subcontractors or suppliers concerning delays experienced, it will inform them of the criteria set forth in the contract for establishing an excusable cause of delay.

Appeal of The J. C. Hester Co., Inc., IBCA-1114-7-76 (Jan. 14, 1977)

A motion to dismiss an appeal is granted when the appellant had failed to file an appeal within 30 days of the date on which the contracting officer's final decision was received. Respecting the contractor's argument that the 30-day time limit should be waived, the Board noted that the right to extend the time for filing a notice of appeal had been specifically excepted from the grant of authority to the Board as set forth in the regulations governing Board proceedings.

Appeal of Harry Claterbos Co. JV, IBCA-1153-5-77 (Dec. 6, 1977) 84 I.D. 969

Failure to Appeal

Where a State swampland selection has been rejected on the ground that the land selected has been disposed of, but in fact that land was available to the State, the judgment is valid and binding until set aside. Since the Secretary has jurisdiction to determine whether the land selected is available, he has jurisdiction to decide erroneously. The erroneous decision will not be set aside where the State did not appeal and the decision has remained unchallenged for over 100 years, the

RULES OF PRACTICE--Continued

APPEALS--Continued

Failure to Appeal--Continued

State itself sold the land to a color of title applicant's predecessor, and an adverse right has intervened.

John Stuart Hunt, Sherman M. Hunt, 31 IBLA 304 (July 22, 1977) 84 I.D. 421

In order for a State to receive legal title to a swampland selection, the Secretary of the Interior or his delegate must determine that the land is swamp in character and available for disposition under the grant. An erroneous decision that selected land is unavailable because it was sold prior to the selection is valid and binding until set aside. The erroneous decision will not be set aside where the State did not appeal and the decision has remained unchallenged for over 100 years, the State itself sold the land at a tax sale to the predecessor in interest of a color of title applicant, and an adverse right, i.e., a class 2 color of title application, has intervened.

White Castle Lumber and Shingle Co., Ltd., 32 IBLA 129 (Sept. 12, 1977)

Where a right-of-way application has been rejected in part, an appeal therefrom should be dismissed if not filed within the period prescribed in 43 CFR 4.411.

Jerrold R. Cooley, Lucy M. Cooley, 32 IBLA 387 (Nov. 7, 1977)

Hearings

A request for a hearing on a Native allotment application will be denied where an evidentiary hearing is not necessary because there are no facts in dispute and the sole question is a legal issue.

Mable Melovedoff, 29 IBLA 250 (Mar. 25, 1977)

Where the Bureau of Land Management has dismissed a protest to the issuance of a special land use permit and on appeal the protestant requests an evidentiary hearing, such request will be denied when no evidence is proferred by protestant which would engender the belief that the development of further facts would require a different result.

Department of the Navy, Naval Weapons Center, China Lake, 29 IBLA 324 (Mar. 30, 1977)

The obligation for proving a valid color of title claim is upon the claimant. Where a claimant has alleged facts which, if proven, may establish her color of title, the Board of Land Appeals may order a fact-finding hearing pursuant to 43 CFR 4.415.

Mable M. Farlow, 30 IBLA 320 (June 7, 1977) 84 I.D. 276

RULES OF PRACTICE--Continued

APPEALS--Continued

Hearings--Continued

The obligation to establish a valid color of title claim is upon the claimant. Where a claimant has alleged facts which, if proved, may establish his color of title, the Board of Land Appeals may order a fact-finding hearing pursuant to 43 CFR 4.415.

Joe I. and Celina V. Sanchez, et al., 32 IBLA 228 (Sept. 20, 1977)

Lawrence F. Willmorth, 32 IBLA 378 (Nov. 1, 1977)

When a mining claim located in the Papago Indian Reservation is declared invalid for failure to pay annual rental timely, and that fact is not disputed, a hearing is not required as there are no issues of fact involved but only of law.

Louis B. Ellsworth, Jr., 33 IBLA 26 (Nov. 22, 1977)

Motion for quantum hearing will be allowed when the Government admitted liability on certain claims in the Answer and the first hearing was limited to entitlement.

Request that hearing of a substantial complex appeal be limited to "entitlement," will not be construed to be a waiver of right to hearing on "quantum" absent a clear record that the request was so intended.

Motion for reconsideration is granted where original ruling that hearing will be limited to entitlement may have contributed to lack of evidence at the hearing and where issues included complex question of concurrent fault and damages.

Appeal of Scona, Inc., IBCA-1094-1-76 (Dec. 28, 1977) 84 I.D. 1019

Motions

The Board of Land Appeals will entertain and grant a motion by the Bureau of Land Management to remand an oil and gas lease case on appeal to the Board from a decision holding the lease had terminated and denying a petition to reinstate the lease, where BLM discovered, while the case was on appeal, that its decision was predicated on an erroneous factual basis in that annual rental for the lease had actually been paid on time, but the check had been misplaced by BLM and was later found.

Kathryn A. Dalton, 31 IBLA 1 (June 15, 1977)

The Government's motion to dismiss an appeal because of the failure of the contractor to give the 20-day written notice required by the Changes clause is denied, where the Board finds that there was timely notice with respect to some of the costs on which the claim is based and that the hearing to be held may show that some or all of the remaining costs fall within other

RULES OF PRACTICE--Continued

APPEALS--Continued

Motions--Continued

recognized exceptions to the strict application of the 20-day cost-limitation provision.

Appeal of Hartford Accident and Indemnity Co., IBCA-1139-1-77 (June 23, 1977) 84 I.D. 296

The Government's motion for reconsideration, which advanced a number of arguments designed to show that the Government's interpretation of the contract was reasonable, provides no reason for overturning the Board's principal decision which applied the rule of contra proferentem. The Board, having previously found that appellant's interpretation was reasonable, now affirms its principal decision since the rule requires interpretation against the drafter of a document to resolve an ambiguity even if each party's interpretation is reasonable.

Appeal of Commonwealth Electric Co., IBCA-1048-11-74 (Sept. 30, 1977) 84 I.D. 867

Motion for a protective order to prevent the disclosure of pre-award technical discussions with bidders in a two-step IFB unsupported by affidavits that the information furnished was (a) a trade secret and was (b) furnished in confidence, was denied, but the Government is nevertheless given 45 days to file affidavits by the bidders on these and other issues.

Appeal of Airco, Inc., IBCA-1074-8-75 (Oct. 17, 1977) 84 I.D. 838

A Government motion to dismiss an appeal is denied where the ground for the motion is that the contractor failed to raise its allegations before the contracting officer prior to filing its appeal but the Board finds that the contracting officer did have an opportunity to pass upon the principal allegations of the contractor prior to rendering his decision.

Appeal of Briles Wing & Helicopter, Inc., IBCA-1158-7-77 (Dec. 2, 1977) 84 I.D. 967

An appeal is dismissed as untimely when it was not filed within 30 days of the date on which the contracting officer's final decision was received by a person who was not employed by the appellant but who was authorized to receive his mail during the 6 weeks the appellant was away on vacation. While the appellant denied that such person was authorized to sign a return receipt for certified mail, the Board noted that no question of authority to sign for certified mail had been raised in the contractor's letter requesting an extension in the time for filing the appeal and that no such question was raised until the Government's motion to dismiss the instant appeal was filed.

A motion to dismiss an appeal is granted when the appellant had failed to file an appeal within 30 days of the date on which the contracting officer's final decision was received. Respecting the contractor's argument that the 30-day time limit should be waived, the Board noted that the right to extend the time for

RULES OF PRACTICE--Continued

APPEALS--Continued

Motions--Continued

filing a notice of appeal had been specifically excepted from the grant of authority to the Board as set forth in the regulations governing Board proceedings.

Appeal of Harry Claterbos Co. JV, IBCA-1153-5-77 (Dec. 6, 1977) 84 I.D. 969

Motion for quantum hearing will be allowed when the Government admitted liability on certain claims in the Answer and the first hearing was limited to entitlement.

Motion for reconsideration is granted where original ruling that hearing will be limited to entitlement may have contributed to lack of evidence at the hearing and where issues included complex question of concurrent fault and damages.

Appeal of Scona, Inc., IBCA-1094-1-76 (Dec. 28, 1977) 84 I.D. 1019

Notice of Appeal

A Government motion to dismiss an appeal is denied where the ground for the motion is that the contractor failed to raise its allegations before the contracting officer prior to filing its appeal but the Board finds that the contracting officer did have an opportunity to pass upon the principal allegations of the contractor prior to rendering his decision.

Appeal of Briles Wing & Helicopter, Inc., IBCA-1158-7-77 (Dec. 2, 1977) 84 I.D. 967

Notice of appeal of all issues in a contracting officer's decision puts all the issues contained therein "at issue" before the IBCA until the parties state the issues then in dispute in the Complaint and Answer.

Appeal of Scona, Inc., IBCA-1094-1-76 (Dec. 28, 1977) 84 I.D. 1019

Reconsideration

Repeating arguments made during the hearing and in the posthearing briefs is not a basis for granting a motion for reconsideration.

Appeal of Halvorson-Lents (A Joint Venture), IBCA-1059-2-75 (May 9, 1977)

A request to reconsider a 1968 decision by the Department rejecting final proof for a homestead entry and canceling the entry is properly rejected in the absence of a showing of "extraordinary circumstances." In the absence of compelling legal or equitable reasons for reconsideration, the principle of res judicata, and its counterpart, finality of administrative action, will operate to bar consideration of a new appeal arising

RULES OF PRACTICE--Continued

APPEALS--Continued

Reconsideration--Continued

from a later proceeding involving the same claim and the same issues.

Pekka K. Merikallio, 30 IBLA 157 (May 18, 1977)

Where a decision of the Board of Land Appeals is based upon an interpretation of Departmental policy, and that policy is subsequently revised and clarified so as to impel a different result in the case without prejudice to the right of any third party, on reconsideration by the Board that portion of its original decision will be modified and the revised policy will be implemented.

Warner Bergman (On Reconsideration), 31 IBLA 21 (June 20, 1977)

The Government's motion for reconsideration, which advanced a number of arguments designed to show that the Government's interpretation of the contract was reasonable, provides no reason for overturning the Board's principal decision which applied the rule of contra proferentem. The Board, having previously found that appellant's interpretation was reasonable, now affirms its principal decision since the rule requires interpretation against the drafter of a document to resolve an ambiguity even if each party's interpretation is reasonable.

Appeal of Commonwealth Electric Co., IBCA-1048-11-74 (Sept. 30, 1977) 84 I.D. 867

Upon reconsideration, the Board finds that where the Government issues an "Extra Work Order" under a "force account" provision for minor extra work not provided for in other pay items, at agreed on rates, the contractor is entitled to be paid for inefficiency, rework costs and delay costs when moisture causes borrow material placed under the extra work order, to become muddy. However, the appellant's failure to give prompt notice of the claim under the force account provision caused the Government to order added pay item work, thus the claim must be reduced by the amount of added pay item payment.

Appeal of Rocky Mountain Construction Co., IBCA-1091-12-75 (Nov. 4, 1977) 84 I.D. 898

The doctrine of finality of administrative action, counterpart of res judicata, designed to achieve orderliness in the administration of public lands, bars reconsideration of a 1936 General Land Office decision, rendered according to procedures then in effect, which canceled a stock-raising homestead entry and from which no appeal was taken.

John Lynn Brough, 33 IBLA 36 (Nov. 25, 1977)

RULES OF PRACTICE--Continued

APPEALS--Continued

Reconsideration--Continued

Motion for quantum hearing will be allowed when the Government admitted liability on certain claims in the Answer and the first hearing was limited to entitlement.

Request that hearing of a substantial complex appeal be limited to "entitlement," will not be construed to be a waiver of right to hearing on "quantum" absent a clear record that the request was so intended.

The findings and determinations of the contracting officer which have been appealed become some evidence to be considered and weighed by the Board together with all the other evidence in the record when the appeal is decided by the Board.

Motion for reconsideration is granted where original ruling that hearing will be limited to entitlement may have contributed to lack of evidence at the hearing and where issues included complex question of concurrent fault and damages.

Appeal of Scona, Inc., IBCA-1094-1-76 (Dec. 28, 1977)
84 I.D. 1019

Service on Adverse Party

When a contestee fails to answer a complaint, the allegations are deemed admitted and the case may be dismissed with prejudice as to that contestee. In addition, in a Government contest, the complaint is not deemed to be insufficient or subject to dismissal where the Government fails to name all interested parties, or for failure to serve every party who has been named.

United States (Contestant) v. Earl Frisco and Sandra S. Young (Contestees), 32 IBLA 248 (Sept. 21, 1977)

Standing to Appeal

An appeal taken by a subcontractor in its own name is dismissed where the Board finds the subcontractor has no standing to invoke the provisions of the Disputes Clause as a means of securing an adjudication by the Board of the rights and obligations of the contesting parties.

An appeal is dismissed where the prime contractor has stated that nothing will be done to further an appeal taken by a subcontractor in its own name and the Board finds that the action of the prime contractor in giving the Government written notice of a potential claim of changed conditions by the subcontractor and any statements made by the prime contractor endorsing the potential claim at the time such notice was given are not a sufficient basis upon which to ground jurisdiction over the appeal.

Appeal of Divide Constructors, Inc., Subcontractor to Granite Construction Co., IBCA-1134-12-76 (Mar. 29, 1977)
84 I.D. 119

RULES OF PRACTICE--Continued

APPEALS--Continued

Standing to Appeal--Continued

The thrust of 43 CFR 4.410, which limits the right to appeal to those who are parties to a case, is not to restrict access to administrative review of actions of Bureau of Land Management officials, but to provide a logical framework within which such review might be exercised. An "appeal" by an individual or group which has not, prior to the "appeal," participated in the formulation of the action to which objection is being voiced, should be treated as a protest under the provisions of 43 CFR 4.450-2.

California Assoc. of Four Wheel Drive Clubs, et al.
30 IBLA 383 (June 10, 1977)

An organization appealing a Bureau of Land Management decision will be considered a "party to a case" within the meaning of 43 CFR 4.410 where the organization uses the lands in question, is recognized as a bona fide representative of the community, receives notice of Bureau actions concerning the lands, actively and extensively participates in the formulation of land use plans for the lands in question, and takes a position in a dispute concerning the use of the land contrary to another group or individual.

Headwaters, 33 IBLA 91 (Dec. 16, 1977)

Under 43 CFR 3522.2-1(a), a proposed readjustment of a coal lease should not be appealed directly to the Board of Land Appeals under 43 CFR 4.410, but, rather, a lessee's objections thereto should first be referred to and acted upon by the State Office, Bureau of Land Management.

California Portland Cement Co., 33 IBLA 223 (Dec. 28, 1977)

Statement of Reasons

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed.

Duncan Miller, 29 IBLA 174 (Mar. 14, 1977)

The Government's motion for reconsideration, which advanced a number of arguments designed to show that the Government's interpretation of the contract was reasonable, provides no reason for overturning the Board's principal decision which applied the rule of contra proferentem. The Board, having previously found that appellant's interpretation was reasonable, now affirms its principal decision since the rule requires interpretation against the drafter of a document to resolve an ambiguity even if each party's interpretation is reasonable.

Appeal of Commonwealth Electric Co., IBCA-1048-11-74
(Sept. 30, 1977)
84 I.D. 867

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons--Continued

A Government motion to dismiss an appeal is denied where the ground for the motion is that the contractor failed to raise its allegations before the contracting officer prior to filing its appeal but the Board finds that the contracting officer did have an opportunity to pass upon the principal allegations of the contractor prior to rendering his decision.

Appeal of Briles Wing & Helicopter, Inc., IBCA-1158-7-77 (Dec. 2, 1977) 84 I.D. 967

Where appellant's allegations on appeal are immaterial and irrelevant and appellant fails to establish any error in the decision below or any infringement of appellant's rights, the appeal is properly dismissed as lacking in merit.

Duncan Miller, 33 IBLA 83 (Dec. 8, 1977)

Timely Filing

Where a right-of-way application has been rejected in part, an appeal therefrom should be dismissed if not filed within the period prescribed in 43 CFR 4.411.

Jerrold R. Cooley, Lucy M. Cooley, 32 IBLA 387 (Nov. 7, 1977)

An appeal is dismissed as untimely when it was not filed within 30 days of the date on which the contracting officer's final decision was received by a person who was not employed by the appellant but who was authorized to receive his mail during the 6 weeks the appellant was away on vacation. While the appellant denied that such person was authorized to sign a return receipt for certified mail, the Board noted that no question of authority to sign for certified mail had been raised in the contractor's letter requesting an extension in the time for filing the appeal and that no such question was raised until the Government's motion to dismiss the instant appeal was filed.

A motion to dismiss an appeal is granted when the appellant had failed to file an appeal within 30 days of the date on which the contracting officer's final decision was received. Respecting the contractor's argument that the 30-day time limit should be waived, the Board noted that the right to extend the time for filing a notice of appeal had been specifically excepted from the grant of authority to the Board as set forth in the regulations governing Board proceedings.

Appeal of Harry Claterbos Co. JV, IBCA-1153-5-77 (Dec. 6, 1977) 84 I.D. 969

EVIDENCE

While the burden of showing an excusable cause of delay to exist is on the construction contractor, the invoking of this rule presupposes that the Government will leave this responsibility with the contractor, or, if it undertakes to correspond directly with the

RULES OF PRACTICE--Continued

EVIDENCE--Continued

subcontractors or suppliers concerning delays experienced, it will inform them of the criteria set forth in the contract for establishing an excusable cause of delay.

Appeal of The J. C. Hester Co., Inc., IBCA-1114-7-76 (Jan. 14, 1977)

Evidence tendered on appeal from a mining contest may only be considered for the limited purpose of determining whether a further hearing is warranted.

United States v. George J. Hunt and A. M. Goodwin, 29 IBLA 86 (Feb. 23, 1977)

A field examination report of a trade and manufacturing site claim is not evidence on which the final action of cancellation may be taken, until such time as the pertinent facts are admitted by the applicant or the report is admitted into evidence at a hearing initiated by a contest complaint.

John B. Coghill, 29 IBLA 177 (Mar. 18, 1977)

Evidence tendered on appeal from an adverse decision in a mining claim contest can only be considered to determine whether a further hearing on the contest should be granted. Where the appellant shows no substantial equitable basis for holding such a hearing and where no substantial expectation appears to exist that such a hearing would produce more conclusive evidence on the issue, a further hearing will not be ordered.

United States v. Bradley F. Denham, 29 IBLA 185 (Mar. 18, 1977)

A lode mining claim for barite is properly declared null and void in the absence of a showing of a discovery on the claim of a deposit of barite which would warrant a prudent man in further expending his labor and means in the reasonable expectation of developing a valuable mine. Evidence of mineralization which may justify further exploration is not sufficient to establish that a discovery of a valuable mineral deposit has been made.

Once the Government has established in a mining claim contest a prima facie case that the claims are not valid for lack of discovery, the burden shifts to the contestee to prove the discovery of a valuable mineral deposit by a preponderance of the evidence.

United States v. Howard S. McKenzie, 29 IBLA 270 (Mar. 28, 1977)

The ultimate burden of proof to show a discovery of a valuable mineral deposit is always upon the mining claimant, but if the Government in a contest fails to present a prima facie case and the contestee moves to

RULES OF PRACTICE--Continued

EVIDENCE--Continued

dismiss the case and rests, the contest complaint must be dismissed because there would be no evidentiary basis for an order of invalidity.

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered; therefore, if evidence presented by contestee shows there has not been a discovery, it may be used in reaching a decision that the claim is invalid regardless of any defects in the prima facie case.

Where the Government has made a prima facie case of lack of discovery in a mining contest, and a mining claimant fails to show discovery by a preponderance of the evidence, he has not satisfied his burden of proof and the claim must be declared invalid.

United States v. Lloyd O'Callaghan, Sr., et al., 29 IBLA 333 (Mar. 31, 1977)

In a Government contest challenging the validity of mining claims located for a clay-type material, an adequate prima facie case is established where there are expert witness opinions that the deposit is only a common clay or shale and it cannot meet refractory standards. The contestees then must go forward with evidence to rebut the Government's case with a preponderance of the evidence.

United States v. Thomas J. Peck, et al., 29 IBLA 357 (Mar. 31, 1977) 84 I.D. 137

Under a contract requiring contractor to provide all necessary material, equipment and labor, the contractor's admission that it did not have adequate equipment or an efficient work force, as well as a lack of experience in the work required to be performed does not meet the burden of proof to justify an extension of time.

Appeal of Scona, Inc., IBCA-1094-1-76 (May 6, 1977)

Evidence offered on appeal from an initial decision by an Administrative Law Judge after a hearing in a contest may not be considered or relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

David A. Burns, 30 IBLA 359 (June 10, 1977)

Government witnesses in a contest proceeding who are qualified by education and experience are competent to testify as experts with reference to the prudent man rule.

United States v. A. O. Bartell, 31 IBLA 47 (June 23, 1977)

RULES OF PRACTICE--Continued

EVIDENCE--Continued

Past evidence of successful mining activity has limited probative value in determining whether there is a present discovery of a valuable mineral deposit on a mining claim, and assay reports can be given little weight when they are not supported by evidence as to who took the sample assayed, where it was taken, and what procedures were followed in taking the sample.

United States v. Lee Nicholson, et al., 31 IBLA 224 (July 7, 1977)

In a mining claim contest where a contestee is of the opinion that the Government did not make a prima facie case of no discovery, he may move to have the case dismissed at the conclusion of the Government's case, and then rest. The contest complaint could be dismissed if the Administrative Law Judge rules that no prima facie case had been made of lack of discovery and there is no other evidence in the record to support the charges in the complaint. But if the contestee goes forward after making such a motion to dismiss and presents his evidence, that evidence must be considered as part of the entire record and its probative value will be weighed. Thus, even if the Government has failed to make a prima facie case, evidence presented by the contestee which supports the Government's contest charges may be used against the contestee, regardless of the defects in the Government's case.

United States v. R. E. Rodgers and Barbara J. Rodgers, 32 IBLA 77 (Sept. 2, 1977)

After holding a hearing pursuant to the Administrative Procedure Act, an Administrative Law Judge may properly find that a person has committed a grazing trespass if that finding is in accordance with and supported by reliable, probative, and substantial evidence. Because a grazing trespass proceeding is not a criminal proceeding, it need not be proved beyond a reasonable doubt that a particular individual committed the trespass.

When 33 percent of the available forage in a grazing allotment is on Federal land and the remainder is on private land, it is appropriate to find that 33 percent of the forage consumed by cattle throughout the allotment was Federal forage, in the absence of evidence to the contrary.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

To establish the mineral character of railroad grant lands under the Act of July 1, 1862 (12 Stat. 489), as amended, it must be shown that known conditions--which may include geological conditions, discoveries of minerals in adjacent land and other observable external conditions upon which prudent and experienced men are known to be accustomed to act--on the critical date are such as reasonably to engender the belief that the land contains mineral of such quality and in such quantity as to render its extraction profitable and justify expenditures to that end.

Southern Pacific Transportation Co., 32 IBLA 218 (Sept. 19, 1977)

RULES OF PRACTICE--Continued

EVIDENCE--Continued

Where a contestee fails to follow up his initial suggestion at the hearing that a deposition of a possible witness be taken with a proper request, it is not error for the Administrative Law Judge to decide the case on the record made at the hearing.

United States (Contestant) v. Earl Frisco and Sandra S. Young (Contestees), 32 IBLA 248 (Sept. 21, 1977)

A party seeking a partial refund of the purchase price under the risk of loss provision of a contract for the cash sale of vegetative resources pursuant to the Materials Act of July 31, 1947, must present substantial evidence of the quantity of resources lost which otherwise would have been harvested.

Alma D. LeBaron, Jr., 32 IBLA 299 (Sept. 29, 1977)

The Goverment has the burden of proof that the contractor failed to deliver the goods. The contractor has the burden of proof that its failure was excusable. Where the only evidence of excusability was a letter from the contractor saying that it was delayed by delays in procurement of components and unexpectedly slower rates of system checkout and software debugging, the contractor has not carried its burden of proof of excusability and the appeal is denied.

Appeal of CSP, Inc., IBCA-1137-12-76 (Nov. 10, 1977)
84 I.D. 917

Motion for reconsideration is granted where original ruling that hearing will be limited to entitlement may have contributed to lack of evidence at the hearing and where issues included complex question of concurrent fault and damages.

Appeal of Scona, Inc., IBCA-1094-1-76 (Dec. 28, 1977)
84 I.D. 1019

GOVERNMENT CONTESTS

The fact that the contest regulations may not contain a specific provision providing for the assertion of affirmative defenses or counterclaims in an answer to a contest complaint does not necessarily bar an Administrative Law Judge from consideration of the substance of such assertions.

United States v. Jerry L. Crow, 28 IBLA 345 (Jan. 24, 1977)

Under the Department of the Interior's rules governing contests against mining claims, where an answer to a complaint is not filed within the prescribed time the allegations of the complaint will be taken as admitted by the contestee and the case decided without a hearing by the appropriate officer of the Bureau of Land Management. A mining claim may be declared null and void

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

where there was a charge in the complaint of insufficient minerals to constitute a valid discovery.

United States v. William C. Smith, a/k/a Bill Smith, 29 IBLA 7 (Feb. 8, 1977)

Under the Department of the Interior's rules governing contests against mining claims, where an answer to a complaint is not filed within the prescribed time the allegations of the complaint will be taken as admitted by the contestee and the case decided without a hearing by the appropriate officer of the Bureau of Land Management. However, under the rules an answer may be accepted if it is received within 10 days after the due date and it is determined that the answer was probably transmitted before the end of the period in which it was required to be filed.

United States v. Jesse Smith, 29 IBLA 10 (Feb. 8, 1977)

When a mining claimant has failed to answer a complaint in a mining contest, the allegations are deemed admitted and the State Office of the Bureau of Land Management will decide the case without a hearing. 43 CFR 4.450-7(a).

A defaulting contestee may not rely on an answer filed by another contestee in the same contest when such answer never purported to be on behalf of the defaulting contestee.

United States v. Frederick A. Hagg, et al., 29 IBLA 128 (Feb. 23, 1977)

The ultimate burden of proof to show a discovery of a valuable mineral deposit is always upon the mining claimant, but if the Government in a contest fails to present a prima facie case and the contestee moves to dismiss the case and rests, the contest complaint must be dismissed because there would be no evidentiary basis for an order of invalidity.

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered; therefore, if evidence presented by contestee shows there has not been a discovery, it may be used in reaching a decision that the claim is invalid regardless of any defects in the prima facie case.

Where the Government has made a prima facie case of lack of discovery in a mining contest, and a mining claimant fails to show discovery by a preponderance of the evidence, he has not satisfied his burden of proof and the claim must be declared invalid.

United States v. Lloyd O'Callaghan, Sr., et al., 29 IBLA 333 (Mar. 31, 1977)

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

Since a Government contest is not insufficient and subject to dismissal for failure to name all parties in interest, a contest is properly brought against persons who are heirs of a director of a corporation whose charter has expired under State law, even though the State law provides that the property of such a corporation passes to a public trustee for distribution by him. Any interest of those not named or served in a manner provided by the pertinent regulation is not affected.

United States v. Emma Elizabeth Conner, and Walter T. Nolte, as the Heirs of R. W. Speer, a Last Known Director of the Arlington Gold Mining Co. (Contestee), 31 IBLA 173 (July 5, 1977)

In a mining claim contest where a contestee is of the opinion that the Government did not make a prima facie case of no discovery, he may move to have the case dismissed at the conclusion of the Government's case, and then rest. The contest complaint could be dismissed if the Administrative Law Judge rules that no prima facie case had been made of lack of discovery and there is no other evidence in the record to support the charges in the complaint. But if the contestee goes forward after making such a motion to dismiss and presents his evidence, that evidence must be considered as part of the entire record and its probative value will be weighed. Thus, even if the Government has failed to make a prima facie case, evidence presented by the contestee which supports the Government's contest charges may be used against the contestee, regardless of the defects in the Government's case.

In a proceeding to determine the validity of an unpatented mining claim the claimants must prevail, if at all, upon the strength of their own case, rather than upon any weakness in that of the Government.

United States v. R. E. Rodgers and Barbara J. Rodgers, 32 IBLA 77 (Sept. 2, 1977)

A Bureau of Land Management decision, dismissing an answer to contest complaints filed in behalf of individual contestees and a company, and holding mining claims null and void because it appeared the company did not own the claims and because the answer was filed in behalf of the individual contestees by someone not authorized to practice in their behalf, will be vacated where on appeal it is shown that within the time for filing the answer the claims had been transferred to the company. There is no need to dismiss the contest and initiate a new contest against the company since a timely answer has been filed in its behalf; instead, the complaints should be amended to substitute the company as the contestee and party in interest and the contest proceeding should go forward against it.

Sharon K. Milazzo, et al., 33 IBLA 57 (Dec. 5, 1977)

RULES OF PRACTICE--Continued

HEARINGS

The dependent resurvey is designed to accomplish a restoration of what purports to be the original conditions according to the record, based, first, upon identified existing corners of the original survey and other recognized and acceptable points of control, and, second, upon the restoration of missing corners by proportionate measurement in harmony with the record of the original survey. Where an appellant who protests a dependent resurvey presents evidence which questions whether, in fact, the Bureau of Land Management accurately located a quarter section corner and three certified surveyors agree with appellant, a hearing will be ordered for resolution of the factual issue of location of the quarter corner.

Frank Lujan, 30 IBLA 95 (Apr. 29, 1977)

A mining claim located on land withdrawn from location under the mining laws is null and void ab initio--without legal effect from the beginning. Such a mining claim may properly be declared null and void without a hearing where the records of the Department of the Interior show that the land was withdrawn at the time the claim was located.

Charles R. Nielsen, Pauline Nielsen, 30 IBLA 235 (May 26, 1977)

Evidence offered on appeal from an initial decision by an Administrative Law Judge after a hearing in a contest may not be considered or relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

David A. Burns, 30 IBLA 359 (June 10, 1977)

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

Universal Resources Corp., et al., 31 IBLA 61 (June 23, 1977)

In a proceeding before the Department to determine the validity of a mining claim, notice and an opportunity for an evidentiary hearing is required only where there is a disputed question of fact; where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

David Budinski, et al., 31 IBLA 139 (June 30, 1977)

RULES OF PRACTICE--Continued

HEARINGS--Continued

Where an Administrative Law Judge's decision contains a ruling, in a single sentence, on all of the proposed findings and conclusions submitted by a party to a hearing and the ruling on each finding and conclusion is clear, there is no requirement that the Judge rule separately as to each of the proposed findings and conclusions.

United States v. Leslie Harling and William Harling, 32 IBLA 29 (Aug. 31, 1977)

There is no constitutional right to a jury trial in an administrative proceeding such as a grazing trespass hearing.

Administrative hearings required in grazing trespass cases are not an unlawful exercise of judicial power and meet constitutional requirements and the standards of the Administrative Procedure Act. The constitutional requirement of due process is not violated merely because an Administrative Law Judge is employed by the Department of the Interior.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

When the Department of the Interior finds that public land within the place limits of a grant to a railroad under the Act of July 1, 1862, as amended, was mineral in character and the railroad company, filing for patent on behalf of an alleged bona fide purchaser from it, challenges such finding, a hearing should be granted at which the Department has the obligation of making a prima facie case of mineral character, whereupon the company has the burden of establishing nonmineral character by a preponderance of the evidence, and the bona fides of the purchaser.

Southern Pacific Transportation Co., 32 IBLA 218 (Sept. 19, 1977)

A request for a hearing will be denied where there is no dispute involving a material fact, and there is no chance of development of further material facts which would require a different decision.

Cabax Mills, 32 IBLA 225 (Sept. 20, 1977)

An applicant has no right to a hearing in connection with original Federal charges for use and occupancy of a communication site, and in the absence of any specific assertion showing error in the appraisal, the appraisal will be sustained on appeal if it is properly formulated.

XYZ Television, Inc., 33 IBLA 80 (Dec. 8, 1977)

RULES OF PRACTICE--Continued

HEARINGS--Continued

A second hearing will not be afforded where a claimant was given notice and an opportunity to appear at a hearing, where she actually was represented at the hearing, and where nothing has been submitted which suggests that another hearing would produce a different result.

United States v. Beatrice Ann Johnson, 33 IBLA 121 (Dec. 19, 1977)

PRIVATE CONTESTS

Where, pursuant to 43 U.S.C. § 315g (1970), a State has acquired land subject to a reservation of minerals to the United States, and the State thereafter leases the surface of the land to a corporation for purposes which are plainly incompatible with mining, the surface lessee has standing to initiate a private contest to determine the validity of unpatented mining claims located on the land. It is not essential to the cause of action that there be an actual physical interference by one party with the other party's use of the land if their respective interests are clearly and potentially conflicting.

Continental Oil Co. v. Aztec Exploration and Development Co., 32 IBLA 1 (Aug. 24, 1977)

PROTESTS

The thrust of 43 CFR 4.410, which limits the right to appeal to those who are parties to a case, is not to restrict access to administrative review of actions of Bureau of Land Management officials, but to provide a logical framework within which such review might be exercised. An "appeal" by an individual or group which has not, prior to the "appeal," participated in the formulation of the action to which objection is being voiced, should be treated as a protest under the provisions of 43 CFR 4.450-2.

The filing of a written protest ordinarily stays the action being protested until such time as a decision on the protest is issued and, under 43 CFR 4.21, the time in which a person adversely affected may file a notice of appeal therefrom.

California Assoc. of Four Wheel Drive Clubs, et al. 30 IBLA 383 (June 10, 1977)

Where a protest has been made against the validity of a drawing entry card (DEC) in the simultaneous oil and gas lease filing procedure, it is improper to issue a lease in response to the protested DEC before the protest is finally dismissed. The Board of Land Appeals, rather than a BLM State Office, has the authority to make final administrative determinations for the Department in matters relating to protests against oil and gas lease offers.

D. E. Pack, 31 IBLA 283 (July 22, 1977)

RULES OF PRACTICE--Continued

SUPERVISORY AUTHORITY OF THE SECRETARY

A motion to dismiss an appeal is granted when the appellant had failed to file an appeal within 30 days of the date on which the contracting officer's final decision was received. Respecting the contractor's argument that the 30-day time limit should be waived, the Board noted that the right to extend the time for filing a notice of appeal had been specifically excepted from the grant of authority to the Board as set forth in the regulations governing Board proceedings.

Appeal of Harry Claterbos Co. JV, IBCA-1153-5-77 (Dec. 6, 1977) 84 I.D. 969

WITNESSES

The Government failed to show that a rejected wall did not conform to the plans and specifications.

Appeal of Rocky Mountain Construction Co., IBCA-1091-12-75 (Aug. 17, 1977) 84 I.D. 829

Where a contestee fails to follow up his initial suggestion at the hearing that a deposition of a possible witness be taken with a proper request, it is not error for the Administrative Law Judge to decide the case on the record made at the hearing.

United States (Contestant) v. Earl Frisco and Sandra S. Young (Contestees), 32 IBLA 248 (Sept. 21, 1977)

SCHOOL LANDS

INDEMNITY SELECTIONS

Under 43 U.S.C. § 852(a)(1) (1970), as amended by sec. 25 of the Geothermal Steam Act of 1970, 30 U.S.C. § 1024 (1970), a State may select lands with geothermal potential as indemnity for base lands lost by it from its grant for common schools without a reservation to the United States of the geothermal rights therein, provided that these base lands also have geothermal potential.

Per sec. 25 of the Geothermal Steam Act of 1970, geothermal resources are treated under 43 U.S.C. § 852(a) (1970) as other leasable minerals, rather than as oil and gas, so that a State need not submit as base for indemnity selection of lands which have been classified by the Geological Survey as being within a "KGRA" (known geothermal resource area) lands which also are classified as KGRA, but instead need only submit base lands classified by GS as having geothermal potential.

Where BLM has issued a clear list giving a State title to lands selected as indemnity for lost school lands but erroneously reserving to the United States geothermal rights to these selected lands, these geothermal rights are still within the power of the United States to dispose of, and the Department still exercises jurisdiction over them, so that the Board of Land Appeals may correct BLM's error by ordering that these

SCHOOL LANDS--Continued

INDEMNITY SELECTIONS--Continued

rights be given to the State by deleting the reservation thereof in the clear list.

Where the record indicates that there may be gross disparity between the value of lands selected by a State as indemnity for lost school lands and the value of base lands submitted by the State in support of the selection, the matter will be remanded to the BLM for revaluation of the lands. If the revaluation reveals a gross disparity, the BLM shall withhold further action until judicial resolution of the propriety of the "grossly disparate value" policy.

State of California, 33 IBLA 160 (Dec. 20, 1977)

MINERAL LANDS

Under 43 U.S.C. § 852(a)(1) (1970), as amended by sec. 25 of the Geothermal Steam Act of 1970, 30 U.S.C. § 1024 (1970), a State may select lands with geothermal potential as indemnity for base lands lost by it from its grant for common schools without a reservation to the United States of the geothermal rights therein, provided that these base lands also have geothermal potential.

Per sec. 25 of the Geothermal Steam Act of 1970, geothermal resources are treated under 43 U.S.C. § 852(a) (1970) as other leasable minerals, rather than as oil and gas, so that a State need not submit as base for indemnity selection of lands which have been classified by the Geological Survey as being within a "KGRA" (known geothermal resource area) lands which also are classified as KGRA, but instead need only submit base lands classified by GS as having geothermal potential.

Where BLM has issued a clear list giving a State title to lands selected as indemnity for lost school lands but erroneously reserving to the United States geothermal rights to these selected lands, these geothermal rights are still within the power of the United States to dispose of, and the Department still exercises jurisdiction over them, so that the Board of Land Appeals may correct BLM's error by ordering that these rights be given to the State by deleting the reservation thereof in the clear list.

Where the record indicates that there may be gross disparity between the value of lands selected by a State as indemnity for lost school lands and the value of base lands submitted by the State in support of the selection, the matter will be remanded to the BLM for revaluation of the lands. If the revaluation reveals a gross disparity, the BLM shall withhold further action until judicial resolution of the propriety of the "grossly disparate value" policy.

State of California, 33 IBLA 160 (Dec. 20, 1977)

SECRETARY OF THE INTERIOR

The Department of the Interior does not have the authority to modify a statute ratifying an agreement

SECRETARY OF THE INTERIOR--Continued

with an Indian tribe on the grounds of fraud or coercion in the execution of the agreement.

Title to Certain Land Within the Boundaries of the Fort Yuma Indian Reservation as Established by the Executive Order of Jan. 9, 1884, M-36886 (Jan. 18, 1977)
84 I.D. 1

It is unnecessary for the Secretary, or his delegate, to consult with men experienced in the exploitation of geothermal steam to make a determination of a known geothermal resources area. It is sufficient that he entertain the opinion that any or all of the elements delineated in 30 U.S.C. § 1001(e) (1970), would engender a belief in such men that the prospects for extraction of geothermal steam or associated geothermal resources are good enough to warrant expenditures of money for that purpose.

Earth Power Corp., 29 IBLA 37 (Feb. 16, 1977)

The Secretary of the Interior is not authorized to issue a patent to a mining claim until he is satisfied that the requirements of the law have been met.

United States v. Fred and Eileen Garner, 30 IBLA 42 (Apr. 18, 1977)

Where the Bureau of Land Management orders a resurvey of a section to identify the boundaries of public land within the section, a private landowner may protest the resurvey and, where the protesting landowner points up a serious contradiction between the resurvey and the topographic calls accompanying the original plat, it is proper to remand the case for a fact hearing.

Domenico A. Tussio, et al., 30 IBLA 92 (Apr. 29, 1977)

The Secretary of the Interior may cause to be made such resurveys or retracements of the rectangular system of surveys of public lands as he may deem essential to mark the boundaries of the remaining public lands.

Frank Lujan, 30 IBLA 95 (Apr. 29, 1977)

Where a decision of the Board of Land Appeals is based upon an interpretation of Departmental policy, and that policy is subsequently revised and clarified so as to impel a different result in the case without prejudice to the right of any third party, on reconsideration by the Board that portion of its original decision will be modified and the revised policy will be implemented.

Warner Bergman (On Reconsideration), 31 IBLA 21 (June 20, 1977)

SECRETARY OF THE INTERIOR--Continued

Although the Bureau of Land Management may require such special stipulations as are necessary for the protection of the lands embraced in any lease, proposed special stipulations must be supported by valid reasons which will be weighed by this Department with due regard for the public interest. It is the Bureau's responsibility to impose stipulations which are necessary, appropriate and reasonably related to oil and gas activities, and a stipulation which would forbid the lessee to occupy the surface must be set aside on appeal where BLM fails to provide adequate justification for its imposition and fails to show that it has considered less stringent stipulations.

Neva H. Henderson, 31 IBLA 217 (July 6, 1977)

Where, in the public interest, the Secretary decides not to reopen land to settlement, a would-be settler on this land is denied no rights by this decision.

Henry E. Reeves, 31 IBLA 242 (July 18, 1977)

It is within the power of the Bureau of Land Management, as delegated by the Secretary of the Interior, to retrace any survey it has made whenever it becomes necessary to the determination of a question pending before it for decision involving rights to the public land.

Stanley A. Phillips, et al., 31 IBLA 342 (July 22, 1977)

Until such time as the Department promulgates regulations, policy guidelines or criteria implementing sec. 302 of the Federal Land Policy and Management Act of 1976, the Bureau of Land Management may properly defer action on the proposed creation of an estate in Federal land thereunder.

Treva L. Berger, 31 IBLA 389 (Aug. 19, 1977)

Pursuant to the Property Clause of the U.S. Const. art. IV, § 3, cl. 2, Congress has enacted the Taylor Grazing Act, 43 U.S.C. § 315 et seq. (1970), and other statutory authority which empower the Secretary of the Interior to define what conduct constitutes a grazing trespass and to determine whether or not an individual has committed a trespass.

Under the Supremacy Clause, U.S. Const., art. VI, cl. 2, Federal laws, including Federal grazing regulations, override conflicting State laws with respect to public lands.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

The Secretary of the Interior has the authority to determine the validity of mining claims on any public lands of the United States, including lands within the National Forest System, after adequate notice and opportunity for hearing. A mining claim contest initiated under the authority of the Secretary of the Interior may be prosecuted by counsel employed by the Department of Agriculture acting on behalf of the Forest Service

SECRETARY OF THE INTERIOR--Continued

where such action is in accordance with a Memorandum of Understanding between the agencies.

United States v. Ernest F. Diven and Richard J. T. Anderson, 32 IBLA 361 (Oct. 25, 1977)

The decision to issue an oil and gas lease to the first-qualified offeror is within the discretion of the Secretary of the Interior, and offers within proposed wild and scenic river areas may be rejected to protect such areas.

Questa Petroleum Co., 33 IBLA 116 (Dec. 16, 1977)

SEGREGATION

GENERALLY

Whether or not a lease issued under the Alaska Grazing Act, 43 U.S.C. § 316 et seq. (1970), was properly issued, the land in such a lease is segregated from settlement, location or entry, including the acquisition of rights under the Alaska Native Allotment Act, 43 U.S.C. § 270-1 et seq. (1970), until the lease is canceled of record pro tanto.

Myrtle M. Jensen Shanigan, 29 IBLA 255 (Mar. 25, 1977)

Publication in the Federal Register of a notice of proposed classification pursuant to 43 CFR 2461.2 will segregate the affected land to the extent indicated in the notice.

Where mining claims occupy land which has subsequently been withdrawn from the operation of the mining laws by a notice of proposed classification, 43 CFR 2461.2, the validity of the claim must be tested as of the date of the published notice, as well as of the date of determination. If the claim was not supported by such a discovery at the date of the published notice of classification, the land within the claim located in the classified area would not be excepted from the effect of the withdrawal.

United States v. R. E. Rodgers and Barbara J. Rodgers, 32 IBLA 77 (Sept. 2, 1977)

SETTLEMENTS ON PUBLIC LANDS

An Alaska Native allotment applicant may not use the occupancy of public land by forebears to qualify herself for an allotment, nor does the use and occupancy of public land by a forebear, while the land was open to settlement, create any right that excepts the land from a withdrawal in favor of an applicant who initiated independent use and occupancy subsequent to the withdrawal.

Myrtle M. Jensen Shanigan, 29 IBLA 255 (Mar. 25, 1977)

SETTLEMENTS ON PUBLIC LANDS--Continued

Where an applicant to purchase a trade and manufacturing site or a headquarters site states he was frustrated in completing his improvements and showing sufficient use of the land as required by the law because of more difficult or complex problems than anticipated, but has not shown that this operation could reasonably be expected to be successful, such problems will not afford any basis for equitable adjudication of his application to purchase.

United States v. Ronald B. Tippetts, 29 IBLA 348 (Mar. 31, 1977)

Where a notice of location of settlement claim is filed covering land which is not available for entry, the notice must be rejected and cannot be suspended to await the possible restoration of the land to entry.

Henry F. Reeves, 31 IBLA 242 (July 18, 1977)

SMALL TRACT ACT

RENEWAL OF LEASE

The filing of an application to lease under the Small Tract Act does not vest any legal right or interest in the applicant, for it is within the discretion of the Secretary whether or not to exercise his authority to lease the land.

Alva F. Muse and Barbara J. Muse, 30 IBLA 36 (Apr. 11, 1977)

SODIUM LEASES AND PERMITS

GENERALLY

A silicate will be considered to be a sodium silicate and subject to disposal under the Mineral Leasing Act either where the sodium within the deposit is commercially valuable or where the sodium is essential to the existence of the mineral.

United States v. Union Carbide Corp., 31 IBLA 72 (June 24, 1977) 84 I.D. 309

LEASES

Under 30 U.S.C. § 262 (1970), a valuable deposit of sodium must be leased competitively even though the Geological Survey determination that lands are so known may have been made subsequent to appellant's filing of its application.

Under 30 U.S.C. §§ 162 and 262 (1970), valuable deposits of sodium compounds are not open to location and disposition under the mining laws, but may be disposed of only under the Mineral Leasing Act, except for certain claims under 43 CFR 3501.1-1(b), existent at passage of Mineral Leasing Act of 1920 which have since

SODIUM LEASES AND PERMITS--Continued

LEASES--Continued

been maintained in accordance with statute and regulation.

Permian Mud Service, Inc., 31 IBLA 150 (June 30, 1977)
84 I.D. 342

PERMITS

Under 30 U.S.C. § 262 (1970), a valuable deposit of sodium must be leased competitively even though the Geological Survey determination that lands are so known may have been made subsequent to appellant's filing of its application.

Under 30 U.S.C. §§ 162 and 262 (1970), valuable deposits of sodium compounds are not open to location and disposition under the mining laws, but may be disposed of only under the Mineral Leasing Act, except for certain claims under 43 CFR 3501.1-1(b), existent at passage of Mineral Leasing Act of 1920 which have since been maintained in accordance with statute and regulation.

Permian Mud Service, Inc., 31 IBLA 150 (June 30, 1977)
84 I.D. 342

SPECIAL USE PERMITS

Where the declared administrative policy is to refuse permission for geophysical exploration on lands controlled by sec. 17(d)(1) of the Alaska Native Claims Settlement Act and the subject lands are under consideration for possible inclusion in the national forest system, a decision refusing such permission will be affirmed.

Shell Oil Co., 28 IBLA 378 (Feb. 4, 1977)

Where a corporation has applied for a special land use permit to use certain natural resource lands in its flight testing programs and the Bureau of Land Management has compiled an environmental analysis record and determined that any impact on the environment due to granting of the permit would be minimal and the Federal Aviation Administration is aware of possible air safety problems, yet has not acted to deter the flight test operations, the permit is properly granted despite the objections relating to air safety raised by the military, which holds restricted airspace adjacent to and above 20,000 feet directly over the lands in question.

Where the Bureau of Land Management has dismissed a protest to the issuance of a special land use permit and on appeal the protestant requests an evidentiary hearing, such request will be denied when no evidence is proferred by protestant which would engender the belief that the development of further facts would require a different result.

Department of the Navy, Naval Weapons Center, China Lake, 29 IBLA 324 (Mar. 30, 1977)

SPECIAL USE PERMITS--Continued

A special use permit for commercial passenger carrying river-trip operations may be denied renewal for non-use or reduced for incomplete use over a 2-year period and only use during the crucial high season may be counted in determining usage if the permit so provides. However, where the program is recent and permittees are not fully familiar with its operations, and all the requirements for maintaining the permit are not immediately apparent, a permittee may be given some leeway before his permit is denied renewal.

Wilderness River Outfitters and Trail Expeditions, Inc., 30 IBLA 148 (May 16, 1977)

A special recreation use permit for commercial boat operations may be denied renewal for nonuse over a 2-year period of any allocated passenger days under a properly noticed "use or lose" policy. However, where the permit program is relatively recent and administrative techniques are not fully reliable, and where the appellant documents on appeal some use of its allocation during the 2-year period, the permit should not be denied renewal under the "use or lose" policy.

Canyoneers, Inc., 30 IBLA 354 (June 9, 1977)

The issuance of a special use permit is discretionary, and the Bureau of Land Management properly exercises that discretion where it denies permits for three of four ORV events on the ground that lack of funds, time, and manpower would impede processing of applications and preclude preparation of the requisite environmental analysis records.

Baja Motor Sports, 32 IBLA 142 (Sept. 12, 1977)

A Bureau of Land Management appraisal from which the annual rental for a special use permit is calculated will be upheld unless the permittee shows by substantial and positive evidence, specific errors in the method or facts on which the appraisal is based.

Evidence that Forest Service land has been appraised at lower values and leased at lower rates than allegedly comparable Bureau of Land Management land will not suffice to overturn the latter's practices where no specific error in its methods has been shown.

Where a permittee introduces an alternative comparative sales analysis in opposition to that of the Bureau of Land Management, he must show by substantial and positive evidence why his analysis is valid and the Bureau of Land Management's invalid. Where the issue rests on the assertion of each party's expert on the validity of his respective analysis and the record fails to contain evidence by which this deadlock can be resolved, the case will be remanded for further factfinding.

Michael S. Deering, 33 IBLA 142 (Dec. 19, 1977)

STATE GRANTS

Although a grant to a State pursuant to the Swamp Land Act of 1849 or 1850 is a grant in praesenti, in that the State is immediately vested with an inchoate equitable title, the legal title does not pass until the Secretary has determined that the land is swamp in character and otherwise available for disposition.

John Stuart Hunt, Sherman M. Hunt, 31 IBLA 304 (July 22, 1977) 84 I.D. 421

STATE LANDS

If the intent of the United States in administering lands now comprising a State was clearly to reserve the bed of a river for some particular purpose, then that intent, embodied in an appropriate legislative or administrative act, results in exclusion of the riverbed from lands passing to the State upon statehood.

Opinion on the Boundaries of and Status of Title to Certain Lands Within the Colville and Spokane Indian Reservations, M-36887 (Feb. 2, 1977) 84 I.D. 72

STATE LAWS

Under the mining law discovery of a valuable mineral deposit is the sine qua non for a valid mining claim. State mining laws relating to discovery may only add to the Federal mining law; such laws cannot diminish the Federal requirements for discovery of a valuable mineral deposit on a mining claim located on Federal lands.

United States v. Bradley F. Denham, 29 IBLA 185 (Mar. 18, 1977)

Where material involving a prior mineral reservation on acquired lands is first submitted on appeal, and the effect of a State statute and State court decree is in issue, it is appropriate to remand the case to the BLM State Office for further consideration.

A. N. Henderson, 30 IBLA 8 (Apr. 4, 1977)

Under the Supremacy Clause, U.S. Const., art. VI, cl. 2, Federal laws, including Federal grazing regulations, override conflicting State laws with respect to public lands.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

STATE SELECTIONS
(See also School Lands, Swamplands.)

Lands described in a State selection application under sec. 6(b) of the Alaska Statehood Act are segregated from all forms of appropriation including location under the mining laws from the time the application is filed in the proper office of the BLM. An amendment to a pre-existing application is effective to segregate the land described in the amendment from the time it is filed.

Dennis G. Quinn, 29 IBLA 307 (Mar. 30, 1977)

Applications filed for temporary withdrawals of land for proposed development under the Carey Act of 1894 must be rejected where the lands have been previously withdrawn for other purposes.

Idaho Department of Water Resources, 32 IBLA 89 (Sept. 2, 1977)

Under 43 U.S.C. § 852(a)(1) (1970), as amended by sec. 25 of the Geothermal Steam Act of 1970, 30 U.S.C. § 1024 (1970), a State may select lands with geothermal potential as indemnity for base lands lost by it from its grant for common schools without a reservation to the United States of the geothermal rights therein, provided that these base lands also have geothermal potential.

Per sec. 25 of the Geothermal Steam Act of 1970, geothermal resources are treated under 43 U.S.C. § 852(a) (1970) as other leasable minerals, rather than as oil and gas, so that a State need not submit as base for indemnity selection of lands which have been classified by the Geological Survey as being within a "KGRA" (known geothermal resource area) lands which also are classified as KGRA, but instead need only submit base lands classified by GS as having geothermal potential.

Where BLM has issued a clear list giving a State title to lands selected as indemnity for lost school lands but erroneously reserving to the United States geothermal rights to these selected lands, these geothermal rights are still within the power of the United States to dispose of, and the Department still exercises jurisdiction over them, so that the Board of Land Appeals may correct BLM's error by ordering that these rights be given to the State by deleting the reservation thereof in the clear list.

Where the record indicates that there may be gross disparity between the value of lands selected by a State as indemnity for lost school lands and the value of base lands submitted by the State in support of the selection, the matter will be remanded to the BLM for revaluation of the lands. If the revaluation reveals a gross disparity, the BLM shall withhold further action until judicial resolution of the propriety of the "grossly disparate value" policy.

State of California, 33 IBLA 160 (Dec. 20, 1977)

STATUTORY CONSTRUCTION

ADMINISTRATIVE CONSTRUCTION

The administrative treatment of land as reservation land under the jurisdiction of the Bureau of Indian Affairs for many purposes is not dispositive of the status of the land in the face of clear legislation demonstrating that it was absolutely ceded, even without conflicting administrative treatment of the lands as public domain or under the jurisdiction of the Reclamation Service. The Department has the authority to resolve disputes and correct errors in the status of lands within its jurisdiction.

Title to Certain Land Within the Boundaries of the Fort Yuma Indian Reservation as Established by the Executive Order of Jan. 9, 1884, M-36886 (Jan. 18, 1977)
84 I.D. 1

IMPLIED REPEALS

Sec. 25 of the Act of Apr. 21, 1904, which authorized the application of the Reclamation Act of 1902 to the Yuma Indian Reservation, did not repeal by implication sec. 17 of the Act of Aug. 15, 1894, which provided for the cession, reclamation and allotment of the Reservation, and is in no way inconsistent with the 1894 Act.

Title to Certain Land Within the Boundaries of the Fort Yuma Indian Reservation as Established by the Executive Order of Jan. 9, 1884, M-36886 (Jan. 18, 1977)
84 I.D. 1

STOCK-RAISING HOMESTEADS

An application filed in 1976 to make a stock-raising homestead entry is properly rejected because the homesteading provisions of the Stock-raising Homestead Act were impliedly repealed by the Taylor Grazing Act and were expressly repealed by the Federal Land Policy and Management Act.

Daniel A. Anderson, 31 IBLA 162 (July 1, 1977)

SURFACE RESOURCES ACT

GENERALLY

In a proceeding under sec. 5 of the Surface Resources Act of July 23, 1955, to determine the rights of the Government and a mining claimant as to the use and management of the surface and its resources on certain mining claims, it is incumbent upon the holder of a claim to demonstrate a discovery of a valuable mineral deposit within the claim as of the time of the Act, and also at the time of the hearing.

Under sec. 5 of the Surface Resources Act of July 23, 1955, the effect of a decision that no mineral discovery has been shown is to permit the Government to manage and dispose of the vegetative and other surface

SURFACE RESOURCES ACT--Continued

GENERALLY--Continued

resources without disturbing claimant's right to develop his mining claims by using the subsurface and surface to the extent necessary to conduct his mining operations.

United States v. A. O. Bartell, 31 IBLA 47 (June 23, 1977)

SURVEYS OF PUBLIC LANDS

GENERALLY

Where the Bureau of Land Management orders a resurvey of a section to identify the boundaries of public land within the section, a private landowner may protest the resurvey and, where the protesting landowner points up a serious contradiction between the resurvey and the topographic calls accompanying the original plat, it is proper to remand the case for a fact hearing.

Domenico A. Tussio, et al., 30 IBLA 92 (Apr. 29, 1977)

In determining what land is conveyed under patents or grants of public land bordering a meandered watercourse, the general rule is that the waterline itself, not the meander line, constitutes the boundary. There is an exception where the meander line may constitute the boundary between lands omitted from the survey and the watercourse if fraud or gross error is shown in the survey. This exception is only applicable to limit the boundary of the surveyed lots on the side of the watercourse where the omitted land is shown. It does not apply to a lot on the opposite side of the watercourse from the omitted land so as to pass title to the omitted land with title to the lot on the opposite side. The waterline would remain the actual boundary of that lot.

Mable M. Farlow, 30 IBLA 320 (June 7, 1977) 84 I.D. 276

It is within the power of the Bureau of Land Management, as delegated by the Secretary of the Interior, to retrace any survey it has made whenever it becomes necessary to the determination of a question pending before it for decision involving rights to the public land.

Stanley A. Phillips, et al., 31 IBLA 342 (July 22, 1977)

Where there is no ambiguity or confusion in the description of lands in an oil and gas lease offer because it includes a complete description of land in a section in a particular township by legal subdivisions embracing unnumbered survey lots or fractional subdivisions, as well as a description of unnumbered lots in accord with current survey numbering practice, the lot designation may be disregarded, and the regulatory requirement that lands in an oil and gas lease offer which have been surveyed under the public land rectangular system must be described by legal subdivision, section, township, and range, is satisfied, even

SURVEYS OF PUBLIC LANDS--Continued

GENERALLY--Continued

though the official plat of survey does not designate or number the fractional subdivisions as lots.

David H. Yates, 33 IBLA 175 (Dec. 20, 1977)

AUTHORITY TO MAKE

Where the Bureau of Land Management orders a resurvey of a section to identify the boundaries of public land within the section, a private landowner may protest the resurvey and, where the protesting landowner points up a serious contradiction between the resurvey and the topographic calls accompanying the original plat, it is proper to remand the case for a fact hearing.

Domenico A. Tussio, et al., 30 IBLA 92 (Apr. 29, 1977)

The Secretary of the Interior may cause to be made such resurveys or retracements of the rectangular system of surveys of public lands as he may deem essential to mark the boundaries of the remaining public lands.

Frank Lujan, 30 IBLA 95 (Apr. 29, 1977)

It is within the power of the Bureau of Land Management, as delegated by the Secretary of the Interior, to retrace any survey it has made whenever it becomes necessary to the determination of a question pending before it for decision involving rights to the public land.

Stanley A. Phillips, et al., 31 IBLA 342 (July 22, 1977)

DEPENDENT RESURVEYS

The Secretary of the Interior may cause to be made such resurveys or retracements of the rectangular system of surveys of public lands as he may deem essential to mark the boundaries of the remaining public lands.

The dependent resurvey is designed to accomplish a restoration of what purports to be the original conditions according to the record, based, first, upon identified existing corners of the original survey and other recognized and acceptable points of control, and, second, upon the restoration of missing corners by proportionate measurement in harmony with the record of the original survey. Where an appellant who protests a dependent resurvey presents evidence which questions whether, in fact, the Bureau of Land Management accurately located a quarter section corner and three certified surveyors agree with appellant, a hearing will be ordered for resolution of the factual issue of location of the quarter corner.

Surveys of the United States, after acceptance, are presumed to be correct and will not be disturbed except upon clear proof that they are fraudulent or grossly erroneous. An appellant challenging a Government resurvey has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate

SURVEYS OF PUBLIC LANDS--Continued

DEPENDENT RESURVEYS--Continued

retracement and reestablishment of the lines of the original survey.

Frank Lujan, 30 IBLA 95 (Apr. 29, 1977)

Restoration of a lost corner by means of proportionate measurement in accordance with the record of the original survey is the proper procedure in a dependent resurvey where there is a lack of conclusive evidence as to the location of the original corner.

Surveys of the United States, after acceptance, are presumed to be correct and will not be disturbed except upon clear proof that they are fraudulent or grossly erroneous. An appellant challenging a Government resurvey has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey.

Stanley A. Phillips, et al., 31 IBLA 342 (July 22, 1977)

SWAMPLANDS

Land, which in its natural condition, quite apart from any overflow of water, is uncultivable, is not land of the character described in the grant of Swamplands to the respective States.

State of California, 29 IBLA 132 (Feb. 23, 1977)

Although a grant to a State pursuant to the Swamp Land Act of 1849 or 1850 is a grant in praesenti, in that the State is immediately vested with an inchoate equitable title, the legal title does not pass until the Secretary has determined that the land is swamp in character and otherwise available for disposition.

Where a State swampland selection has been rejected on the ground that the land selected has been disposed of, but in fact that land was available to the State, the judgment is valid and binding until set aside. Since the Secretary has jurisdiction to determine whether the land selected is available, he has jurisdiction to decide erroneously. The erroneous decision will not be set aside where the State did not appeal and the decision has remained unchallenged for over 100 years, the State itself sold the land to a color of title applicant's predecessor, and an adverse right has intervened.

A color of title claim stemming from a tax sale by a State in 1900 to a color of title applicant's predecessor in interest on which taxes have since been paid is an adverse claim sufficient to warrant the Department in not setting aside an 1853 decision erroneously rejecting a swampland selection or from not giving a new State selection priority over the color of title application.

John Stuart Hunt, Sherman M. Hunt, 31 IBLA 304 (July 22, 1977) 84 I.D. 421

SWAMPLANDS--Continued

Where a State selects land as swamp and overflowed within the meaning of the Swamplands Acts and relies on field notes which predate the Acts to establish the character of the land, those field notes must show conclusively that the land is swamp and overflowed. In analyzing such pre-Act field notes, the Department will examine all descriptive references contained in the notes, including types of terrain and vegetation and their relative location.

It is generally stated that grants of swamp and overflowed lands under the 1849 and 1850 Swampland Acts were in praesenti and gave the States inchoate title to such lands that was perfected, as of the dates of the Acts, when the lands were identified and legal title passed to the State under the procedure established by the Acts.

In order for a State to receive legal title to a swampland selection, the Secretary of the Interior or his delegate must determine that the land is swamp in character and available for disposition under the grant. An erroneous decision that selected land is unavailable because it was sold prior to the selection is valid and binding until set aside. The erroneous decision will not be set aside where the State did not appeal and the decision has remained unchallenged for over 100 years, the State itself sold the land at a tax sale to the predecessor in interest of a color of title applicant, and an adverse right, i.e., a class 2 color of title application, has intervened.

White Castle Lumber and Shingle Co., Ltd., 32 IBLA 129 (Sept. 12, 1977)

TAYLOR GRAZING ACT

GENERALLY

Under the terms and conditions in 43 CFR 4125.1-1(i) placed by the Department on the continued effectiveness of grazing leases, as allowed by sec. 15 of the Taylor Grazing Act, a grazing lease may be canceled in its entirety in order to use the land included in it as a wildlife habitat.

Bill W. Fraser, 30 IBLA 277 (June 1, 1977)

An application filed in 1976 to make a stock-raising homestead entry is properly rejected because the homesteading provisions of the Stock-raising Homestead Act were impliedly repealed by the Taylor Grazing Act and were expressly repealed by the Federal Land Policy and Management Act.

Daniel A. Anderson, 31 IBLA 162 (July 1, 1977)

TIMBER SALES AND DISPOSALS

Where a purchaser in a timber sale contract alleges that there is a discrepancy between the volume of timber estimated by the Bureau of Land Management and the volume removed by the purchaser, the shortage may be explained by the fact that BLM's cruising and scaling standards are substantially different from those used by the Columbia River Log Scaling and Grading Bureau which estimated the volume recovered by the purchaser.

A timber sale is a lump-sum sale where the purchase price is not contingent on the volume of timber to be recovered. Where the timber sale contract specifically disclaims warranties of quantity and quality, the purchaser may not recover for an alleged shortage in the volume on the theory that the Government was negligent in estimating the volume of timber, or that there was a mutual mistake in fact in regard to the volume, or that such disclaimers are unconscionable.

La Ro Lumber Co., Inc., 30 IBLA 202 (May 20, 1977)

The Bureau of Land Management, under 43 CFR 5442.3, has the authority to reject bids submitted for timber sales where it rationally determines that rejection is in the Government's interest.

Cabax Mills, 32 IBLA 225 (Sept. 20, 1977)

A party seeking a partial refund of the purchase price under the risk of loss provision of a contract for the cash sale of vegetative resources pursuant to the Materials Act of July 31, 1947, must present substantial evidence of the quantity of resources lost which otherwise would have been harvested.

Alma D. LeBaron, Jr., 32 IBLA 299 (Sept. 29, 1977)

TITLE

REAL PROPERTY

Where material involving a prior mineral reservation on acquired lands is first submitted on appeal, and the effect of a State statute and State court decree is in issue, it is appropriate to remand the case to the BLM State Office for further consideration.

A. N. Henderson, 30 IBLA 8 (Apr. 4, 1977)

TOWNSITES

An appeal to the Board of Land Appeals will be dismissed where the enactment of legislation renders moot the questions on appeal.

Gibbonsville Townsite, 30 IBLA 74 (Apr. 18, 1977)

An appeal to the Board of Land Appeals will be dismissed where the enactment of the Federal Land Policy and Management Act renders moot the questions on appeal.

Silver Peak Townsite (Trustee), 30 IBLA 357 (June 10, 1977)

TRESPASS

GENERALLY

A mining claim void ab initio may be a proper basis for a conveyance under the Mining Claims Occupancy Act, but pursuant to 30 U.S.C. § 706 (1970) trespass damages should ordinarily be assessed.

Feliciano Y. Jimenez, Margarita R. Jimenez, 30 IBLA 82 (Apr. 27, 1977)

One who grazes livestock in a grazing allotment without authorization prior to the issuance of a license commits a grazing trespass.

Where there is a final administrative determination of the assessment of damages for a grazing trespass by a licensee, no license or permit should thereafter be issued or renewed until payment of the assessed amount.

Pursuant to the Property Clause of the U.S. Const. art. IV, § 3, cl. 2, Congress has enacted the Taylor Grazing Act, 43 U.S.C. § 315 et seq. (1970), and other statutory authority which empower the Secretary of the Interior to define what conduct constitutes a grazing trespass and to determine whether or not an individual has committed a trespass.

There is no constitutional right to a jury trial in an administrative proceeding such as a grazing trespass hearing.

Where cattle are admitted to an allotment at the beginning of the usual grazing season but prior to the issuance of a license for that season, and payment is later made by a check which recites that it is "payment in full for 1975 grazing fee," the Bureau of Land Management may properly deposit the check, allotting part of the proceeds for the grazing license for the rest of the season, and deposit the remainder of the proceeds in a suspense account pending resolution of the trespass. Such action indicates that the check was not accepted in settlement of the trespass damages, and cashing the check does not constitute an accord and satisfaction of the trespass damages.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

An assertion by an alleged trespasser that he holds the right to graze and enclose Federal range must be documented to rebut the Government's prima facie case of trespass.

The grantee of a right-of-way for irrigation or drainage purposes may not fence the right-of-way unless it is necessary to protect the grantee's use. Where the necessity of protecting an irrigation reservoir from incursion by cattle did not appear on the record, and the fence was not so located as to serve that purpose, fencing the reservoir constituted a trespass.

Joe Stewart, 33 IBLA 225 (Dec. 28, 1977)

TRESPASS--Continued

MEASURE OF DAMAGES

Under existing regulations, where a grazing trespass is not clearly willful, damages are to be computed at the rate of $2 per AUM of Federal forage consumed or the commercial rate, whichever is greater.

When 33 percent of the available forage in a grazing allotment is on Federal land and the remainder is on private land, it is appropriate to find that 33 percent of the forage consumed by cattle throughout the allotment was Federal forage, in the absence of evidence to the contrary.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

GENERALLY

Benefits under the Act and implementing regulations do not include reimbursement for costs of field surveys, property descriptions and maps, pertaining to lands to be retained by the displaced person upon acquisition by the United States of a portion of his lands.

Uniform Relocation Assistance Appeal of Mr. George P. Leonard, 2 OHA 135 (June 22, 1977)

UNIFORM RELOCATION ASSISTANCE

Moving and Related Expenses

Generally

A claim for actual moving expenses of farm and sawmill operation will be allowed where claimants prove the actual cost of movement and the cost of moving is not in excess of the reasonable value of the equipment moved.

Uniform Relocation Assistance Appeal of Wayne and Icelene Blackwell, 2 OHA 117 (May 3, 1977)

A claim under sec. 202(a)(1) of the Act, for reimbursement of actual costs incurred in moving timber from acquired lands, will be reduced to the amount estimated by the claimant as reasonable costs for such moving of personal property where the actual costs are shown by the record to be in excess of reasonable costs for such moving.

Where the evidence shows timber was cut for present marketing purposes immediately prior to the acquisition of the lands by the United States, and was marketed within a few months thereafter, it is not to be regarded as a stockpile item similar to those referred to in sec. 114-50.601-1(b)(3).

A claim for reimbursement for the fair-market value of residual timber abandoned on acquired lands upon discontinuance of a logging business will be allowed

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Moving and Related Expenses--Continued

Generally--Continued

under sec. 202(a)(2) of the Act where the record evidence shows the cost of moving the timber would be uneconomical.

Uniform Relocation Assistance Appeal of Mr. Alden E. Allen, 2 OHA 123 (June 13, 1977)

A claim for moving and related expenses under sec. 202(a) of the Act, involving personalty removed from an apartment rental business on acguired lands by the displaced owners of the business themselves, is properly limited to probable costs involved in a commercial move of such property to the location to which it was first moved, in the absence of evidence which would justify allowance of a higher amount as actual reasonable expenses incurred by the displaced persons as moving and related expenses with respect to such property.

Uniform Relocation Assistance Appeals of Bernard W. and Ruth W. Bowman, 2 OHA 142 (Aug. 8, 1977)

A claim for reimbursement for the cost of meals on the day of moving a mobile home trailer from a rental site on acguired lands to a replacement rental site elsewhere is properly denied on the basis that the Act and the Department's implementing regulations do not provide for such payment.

Uniform Relocation Assistance Appeal of Mrs. Lona Halles, 2 OHA 156 (Oct. 17, 1977)

Payments in Lieu of Moving and Related Expenses

Fixed Payment(s)

Taking of Business Operation

Determinations of eligibility for fixed payments under sec. 202(c) of the Act, in lieu of moving and related expenses under sec. 202(a) of the Act, will be reversed and the cases will be remanded for further appropriate action, including repayment of benefits already allowed the claimant under sec. 202(c) of the Act, where the record evidence is insufficient to establish the claimant's entitlement to such benefits, and the claimant, on appeal, has failed to furnish the evidence reguired for a determination of the proper amount, if any, to which he may be entitled under the law and implementing regulations, after due notice of such reguirement.

Uniform Relocation Assistance Appeal of Mr. Richard R. Grummon, 2 OHA 113 (Apr. 29, 1977)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Moving and Related Expenses--Continued

Payments in Lieu of Moving and Related Expenses --Continued

Fixed Payment(s)--Continued

Taking of Business Operation--Continued

A claim for a fixed payment under sec. 202(c) of the Act, for loss of an apartment rental business on acguired lands, in lieu of moving and related expenses under sec. 202(a) of the Act, is properly disallowed where the record shows the displaced owners of the business also owned and operated other rental properties, including another apartment rental building, in the same business.

Uniform Relocation Assistance Appeals of Bernard W. and Ruth W. Bowman, 2 OHA 142 (Aug. 8, 1977)

Replacement Housing Payment for Homeowners

Generally

A claim for replacement supplemental housing benefits is properly denied where a comparable housing survey of the area within a 50-mile radius of the acquired property shows that the claimant could have purchased comparable replacement property which was decent, safe and sanitary at a price less than was paid for the acquired property.

The amount paid by the Government for the acguired property and relocation assistance benefits are separate and distinct entitlements and a promise made by a Government employee to pay relocation assistance benefits as a part of the purchase price of the acguired property would be invalid and an allegation by the appellant that such a promise had been made would not constitute grounds for administrative relief from the Secretary.

Uniform Relocation Assistance Appeal of Illys M. Busacker, 2 OHA 109 (Apr. 21, 1977)

Even though a dwelling and homesite may be located on a larger tract of acguired lands whose value is based upon uses higher and better than residential, namely, commerical uses, sec. 203(a) of the Act reguires that any replacement housing payment for the homeowner shall be based on the acquisition cost of the dwelling; hence, a portion of the purchase price paid for the entire property must be attributed to the dwelling and homesite. The appraised valuation of the dwelling and homesite must reflect the fair-market value of such property for residential purposes; and where the purchase price of the entire property exceeds the Government's appraised value, a proportionate share of the increase should be applied to the acguisition cost of the dwelling and homesite.

In computing allowable replacement housing benefits for a homeowner displaced by Government acguisition from a tract which is larger than the average residential lot in the area and which has been appraised and purchased as valuable for commercial uses, a determination of lot size for the homesite which is consistent with standard

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Replacement Housing Payment for Homeowners--Continued

Generally--Continued

lots for residential purposes in the vicinity of the acquired lands will be affirmed.

Uniform Relocation Assistance Appeal of Mrs. Virginia J. Rhule, 2 OHA 138 (June 29, 1977)

Where the record shows replacement housing supplement benefits were allowed upon a relocation assistance claim in error under a mistake of law, the claimants are properly required to repay to the United States the sum so paid to them erroneously.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Frederick W. Morrison, 2 OHA 147 (Aug. 9, 1977)

Where it is indicated on appeal that a determination of replacement housing supplement benefits under sec. 203 of the Act may be erroneous because it was based on selected dwellings challenged by the claimant as not equivalent or substantially the same as the acquired dwelling, the case will be remanded for further appropriate action to ascertain and allow the proper amount of replacement housing supplement benefits under the Act and the Department's implementing regulations.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Morton W. Stanford, 2 OHA 160 (Oct. 19, 1977)

Waiver of Benefits

Claimants are ineligible for replacement housing supplement benefits where they sold their property to the Government reserving a right of use and occupancy of a portion thereof for residential use for a term of years and before moving from their dwelling on the portion so reserved Congress eliminated replacement housing supplement benefits as to this class of claimants.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Frederick W. Morrison, 2 OHA 147 (Aug. 9, 1977)

Replacement Housing Payment for Tenants and Certain Others

A determination of ineligibility for a rental replacement housing payment under sec. 204 of the Act will be affirmed where the evidence shows the dwelling on the acquired land, where the claimant resided, was a single-family dwelling owned by the claimant's parents, from whom the property was acquired, and that the claimant and his parents lived there together as a family unit. In such circumstances the claimant and his parents are properly regarded as one displaced person for the purpose of replacement housing.

Uniform Relocation Assistance Appeal of Larry R. Baysinger, 2 OHA 153 (Sept. 20, 1977)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Replacement Housing Payment for Tenants and Certain Others--Continued

Where the record shows the monthly rent for a mobile home replacement housing site is less than the rent which was paid for the acquired site on which the mobile home had been situated, no rental replacement housing payment is allowable under sec. 204 of the Act.

Uniform Relocation Assistance Appeal of Mrs. Lona Halles, 2 OHA 156 (Oct. 17, 1977)

WATER AND WATER RIGHTS

GENERALLY

One challenging the accuracy of an appraisal of water based on fair-market value must show by substantial evidence the nature of the alleged error; where the appraisal has been conducted in accordance with generally accepted appraisal principles, allegations of error unsupported by evidence will be given little weight.

An attempted adjudication of Federal water rights will not be recognized where the State court 1) lacked jurisdiction over the United States for failure to serve process upon the Attorney General of the United States or his designated representative pursuant to 43 U.S.C. § 666(b) (1970); and 2) lacked jurisdiction over the subject matter for failure of the litigation to conform to the requirements of a general litigation of all water rights pursuant to 43 U.S.C. § 666(a) (1970).

A lessee of the water from a well owned by the Federal Government, who agrees that his use of the water will not be used as a basis for obtaining a permanent water right and who nevertheless proceeds to try to obtain a water right in State court based on that use, will be estopped from asserting any resulting decree of the State court for any purpose.

Park Center Water District and The Canon Heights Irrigation and Reservoir Co., 28 IBLA 368 (Feb. 3, 1977) 84 I.D. 87

FEDERALLY RESERVED WATER RIGHTS

Where a waterhole and the surrounding land were withdrawn pursuant to both an Executive Order and an Act of Congress and reserved exclusively for use by the public before the water had been appropriated by others, the Federally reserved water right is superior to and precludes any acquisition of rights to the water by others.

Park Center Water District and The Canon Heights Irrigation and Reservoir Co., 28 IBLA 368 (Feb. 3, 1977) 84 I.D. 87

WATER AND WATER RIGHTS--Continued

STATE LAWS

An attempted adjudication of Federal water rights will not be recognized where the State court 1) lacked jurisdiction over the United States for failure to serve process upon the Attorney General of the United States or his designated representative pursuant to 43 U.S.C. § 666(b) (1970); and 2) lacked jurisdiction over the subject matter for failure of the litigation to conform to the requirements of a general litigation of all water rights pursuant to 43 U.S.C. § 666(a) (1970).

Where a waterhole and the surrounding land were withdrawn pursuant to both an Executive Order and an Act of Congress and reserved exclusively for use by the public before the water had been appropriated by others, the Federally reserved water right is superior to and precludes any acquisition of rights to the water by others.

Park Center Water District and The Canon Heights Irrigation and Reservoir Co., 28 IBLA 368 (Feb. 3, 1977)
84 I.D. 87

WILD AND SCENIC RIVERS ACT

Public land within one-quarter mile of the banks of a river designated by Act of Congress for potential addition to the national wild and scenic rivers system is withdrawn by statute from entry, sale, or other disposition under the public land laws of the United States for a designated period to allow a study of the suitability of the river for inclusion in the system and a report to Congress thereon. This withdrawal, however, does not preclude a right-of-way grant which does not involve a conveyance of title or rights leading thereto.

The Secretary has the discretionary authority to grant a right-of-way application which includes an area designated for potential addition to the national wild and scenic rivers system where it is determined to be in the public interest. In the exercise of that discretion it is appropriate to consider the suitability of the subject area for inclusion in the system, classification of the characteristics (wild, scenic, or recreational) of the river area, and whether such a land use will unreasonably interfere with the values disclosed.

Lower Valley Power & Light, Inc., 29 IBLA 107 (Feb. 23, 1977)

The decision to issue an oil and gas lease to the first qualified offeror is within the discretion of the Secretary of the Interior, and offers within proposed wild and scenic river areas may be rejected to protect such areas.

The Bureau of Land Management may require the execution of special stipulations, including a no-surface-occupancy stipulation, to protect environmental and other land use values, as a condition for issuing an oil and gas lease. Where the Bureau of Land Management, in a decision requiring a no-surface-occupancy stipulation along a proposed wild and scenic river corridor, has considered all information available to it, has

WILD AND SCENIC RIVERS ACT--Continued

adequately weighed the factors involved, and the appellant has not shown sufficient reason to change the result, the decision will be upheld.

Questa Petroleum Co., 33 IBLA 116 (Dec. 16, 1977)

WILD FREE - ROAMING HORSES AND BURROS ACT

One who has laid claim, pursuant to the Wild Free-Roaming Horses and Burros Act, to horses on the public lands and who does not remove them within a reasonable period, is subject to having the renewal of his grazing lease denied.

Truman and Velma Cross, 29 IBLA 4 (Feb. 7, 1977)

WITHDRAWALS AND RESERVATIONS

GENERALLY

The Agreement of Dec. 4, 1893, between the Yuma (now Quechan) Indians and the United States, ratified in sec. 17 of the Act of Aug. 15, 1894, was an absolute, present cession of any and all interests of the Indians to the nonirrigable lands in the Fort Yuma Indian Reservation created by Executive Order of Jan. 9, 1884.

Assuming that the Act of Aug. 15, 1894, was a conditional rather than an absolute cession by the Yuma (now Quechan) Indians of their rights to the nonirrigable lands in the Fort Yuma Indian Reservation, all material conditions on the part of the United States were met, and the cession has occurred.

Title to Certain Land Within the Boundaries of the Fort Yuma Indian Reservation as Established by the Executive Order of Jan. 9, 1884, M-36886 (Jan. 18, 1977)
84 I.D. 1

Public land within one-quarter mile of the banks of a river designated by Act of Congress for potential addition to the national wild and scenic rivers system is withdrawn by statute from entry, sale, or other disposition under the public land laws of the United States for a designated period to allow a study of the suitability of the river for inclusion in the system and a report to Congress thereon. This withdrawal, however, does not preclude a right-of-way grant which does not involve a conveyance of title or rights leading thereto.

Lower Valley Power & Light, Inc., 29 IBLA 107 (Feb. 23, 1977)

Lands withdrawn for the protection of Alaska Natives' selection rights are not available for oil and gas leasing under the Mineral Leasing Act. 43 U.S.C. § 1621(i) (Supp. III 1973).

James W. Canon, et al., 1 SEC. 1 (Apr. 15, 1977)
84 I.D. 176

WITHDRAWALS AND RESERVATIONS--Continued

GENERALLY--Continued

A withdrawal order is considered to be valid notice of its contents and becomes effective by its filing with the Federal Register, despite any asserted failure to properly note it on the land records.

Rod Knight, 30 IBLA 224 (May 26, 1977)

A description of lands withdrawn by a powersite classification must be interpreted according to its plain meaning when this meaning is consistent with descriptive maps attached to it, with the interpretation of its promulgator, and with the purpose of the classification.

Henry E. Reeves, 31 IBLA 242 (July 18, 1977)

It is improper for a District Office to find a notice of location for a homesite unacceptable for recordation when the location notice is regular on its face and the land was open to location at the time the notice was filed.

The filing of a notice of location for a homesite does not create any rights in the land, and the filing of a notice will not prevent a withdrawal from attaching to the land if, prior to the effective date of the withdrawal, the locator fails to perform the requisite acts of use, occupancy and development necessary to establish a valid existing right in the claim. Marking of boundaries of the claim does not constitute use and development.

George T. Beck, 31 IBLA 363 (July 28, 1977)

A mining claim located before Aug. 11, 1955, on land within an existing highway material site withdrawal is properly declared null and void as the land was then closed to mineral entry. Void claims located prior to that date were not given life by the Mining Claims Rights Restoration Act of 1955.

Treva L. Berger, 31 IBLA 389 (Aug. 19, 1977)

Applications filed for temporary withdrawals of land for proposed development under the Carey Act of 1894 must be rejected where the lands have been previously withdrawn for other purposes.

The Bureau of Land Management should suspend consideration of the applications under the Carey Act pending Departmental action to revise and recodify previously deleted regulations which provide guidance for the administration of the Carey Act.

Idaho Department of Water Resources, 32 IBLA 89 (Sept. 2, 1977)

WITHDRAWALS AND RESERVATIONS--Continued

GENERALLY--Continued

The filing of a notice of location for a headquarters site or a homesite does not create any rights in the land, and the filing of a notice will not prevent a withdrawal from attaching to the land if, prior to the effective date of the withdrawal, the locator fails to perform the requisite acts of use, occupancy and development necessary to establish a valid existing right in the claim. Marking of boundaries of the claim does not constitute use and development.

John D. Ketscher, Alfred L. DeCicco, 32 IBLA 235 (Sept. 21, 1977)

A mining claim located on land at a time when the land is segregated from mining location by a proposed withdrawal is properly declared null and void ab initio. Where the official records of the Department reflect such proposed withdrawal, a hearing is not required to establish the invalidity of the claim.

Mark W. Boone and John L. Dutra, 33 IBLA 32 (Nov. 25, 1977)

The authority of the Government to proceed with the withdrawal of public lands, after a Federal agency has filed an application for such action, which withdraws that land from mineral location, will not be barred by laches because of lapse of time.

Once public land is segregated from mineral entry by notation on the official records of the BLM, objection to the merits of the withdrawal will not vitiate the effect of the withdrawal with respect to the appropriation of the land.

William J. Smith, Sr., et al., 33 IBLA 47 (Nov. 25, 1977)

EFFECT OF

Public land within one-quarter mile of the banks of a river designated by Act of Congress for potential addition to the national wild and scenic rivers system is withdrawn by statute from entry, sale, or other disposition under the public land laws of the United States for a designated period to allow a study of the suitability of the river for inclusion in the system and a report to Congress thereon. This withdrawal, however, does not preclude a right-of-way grant which does not involve a conveyance of title or rights leading thereto.

Lower Valley Power & Light, Inc., 29 IBLA 107 (Feb. 23, 1977)

The notation on public records of the Bureau of Land Management of a request for withdrawal has a segregative effect on land included in a mining location, so that in a contest proceeding, the claimants must show that they had made a discovery of a valuable mineral

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

deposit before the time of posting of the withdrawal application.

United States v. John L. Maley and James F. Pagel, 29 IBLA 201 (Mar. 22, 1977)

An Alaska Native allotment applicant may not use the occupancy of public land by forebears to qualify herself for an allotment, nor does the use and occupancy of public land by a forebear, while the land was open to settlement, create any right that excepts the land from a withdrawal in favor of an applicant who initiated independent use and occupancy subsequent to the withdrawal.

Myrtle M. Jensen Shanigan, 29 IBLA 255 (Mar. 25, 1977)

Where a mining claim is located on lands at a time when the official records of the Bureau of Land Management showed such lands to be subject to a proposed withdrawal from operation of the mining laws, that mining claim is null and void ab initio.

Jack D. Canon, et al., 30 IBLA 112 (May 2, 1977)

Where a homestead entry has been located on land later included within a withdrawal "subject to valid existing rights," the withdrawal attaches to the land within the homestead upon cancellation of the entry. An amendment of a homestead entry cannot include lands within a canceled adjoining entry to which a withdrawal has attached.

Pekka K. Merikallio, 30 IBLA 157 (May 18, 1977)

A mining claim located on land at a time when such land was withdrawn from mineral entry is properly declared null and void ab initio.

Sally Lester, et al., 31 IBLA 43 (June 21, 1977)

A mining claim located for a nonmetalliferous mineral on land at a time when such land was withdrawn from mineral entry for nonmetalliferous minerals is properly declared null and void ab initio.

David Budinski, et al., 31 IBLA 139 (June 30, 1977)

A powersite classification effects withdrawal of lands to the full extent described therein as of publication in the Federal Register, even if the extent of the land withdrawn by it is not accurately entered subsequently on land-status maps, and, notwithstanding this error, lands classified by it are withdrawn under sec. 24 of the Federal Power Act from settlement under the homestead laws, so that a notice of location settlement claim and final proof concerning these lands is properly rejected.

Henry E. Reeves, 31 IBLA 242 (July 18, 1977)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

Land reserved for a reservoir site by executive order under authority of the Pickett Act of June 25, 1910, to conserve water for irrigation purposes, remained open to the location of mining claims for metalliferous minerals, and the provisions of the Federal Power Act of June 10, 1920, would not operate to bar the location of such claims unless and until a powersite classification was subsequently imposed.

Henry Stagnaro, 31 IBLA 357 (July 25, 1977)

When land is withdrawn from the operation of the mining laws subject to valid existing rights, such as by the creation of the North Cascades National Park on Oct. 2, 1968, the validity of a mining claim located prior to the withdrawal must be established as of the date of the withdrawal as well as of the date of the hearing.

United States v. Robert A. Rukke (Registered Agent), Valumines, Inc., et al., 32 IBLA 155 (Sept. 12, 1977)

Land is segregated from entry under the mining laws when a proposed withdrawal of the lands from mineral entry is noted on the official records of the Bureau of Land Management and a mining claim located after that time is null and void ab initio.

The segregative effect of an application by a Federal agency for withdrawal of land from mineral entry is not affected by the provision in the published proposal that further hearings and investigations may be held.

Once public land is segregated from mineral entry by notation on the official records of the BLM, objection to the merits of the withdrawal will not vitiate the effect of the withdrawal with respect to the appropriation of the land.

William J. Smith, Sr., et al., 33 IBLA 47 (Nov. 25, 1977)

When land is withdrawn from the operation of the mining laws subject to valid existing rights, such as the Organ Pipe Cactus National Monument on Sept. 28, 1976, the validity of a mining claim located prior to the withdrawal must be established as of the date of the withdrawal as well as of the date of the hearing.

United States v. Lewis L. Netherlin, Gabriele Netherlin, 33 IBLA 86 (Dec. 8, 1977)

POWER SITES

A description of lands withdrawn by a powersite classification must be interpreted according to its plain meaning when this meaning is consistent with descriptive maps attached to it, with the interpretation of its promulgator, and with the purpose of the classification.

A powersite classification effects withdrawal of lands to the full extent described therein as of publication in the Federal Register, even if the extent of the land withdrawn by it is not accurately entered subsequently on land-status maps, and, notwithstanding this error,

WITHDRAWALS AND RESERVATIONS--Continued

POWER SITES--Continued

lands classified by it are withdrawn under sec. 24 of the Federal Power Act from settlement under the homestead laws, so that a notice of location settlement claim and final proof concerning these lands is properly rejected.

Henry E. Reeves, 31 IBLA 242 (July 18, 1977)

Where prior to 1920 a powersite withdrawal was created by executive order under authority of the Act of June 25, 1910, the withdrawn land remained open to the location of mining claims for metalliferous minerals until passage of the Federal Power Act on June 10, 1920, which closed powersites to all entry, location or disposal. Any mining claim located thereafter on powersite lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act or the location of the claim has been made in accordance with the Act of Aug. 11, 1955, 30 U.S.C. § 621 (1970). The latter Act did not operate retroactively to validate void claims.

Henry Stagnaro, 31 IBLA 357 (July 25, 1977)

RECLAMATION WITHDRAWALS

Applications filed for temporary withdrawals of land for proposed development under the Carey Act of 1894 must be rejected where the lands have been previously withdrawn for other purposes.

Idaho Department of Water Resources, 32 IBLA 89 (Sept. 2, 1977)

REVOCATION AND RESTORATION

Where, in the public interest, the Secretary decides not to reopen land to settlement, a would-be settler on this land is denied no rights by this decision.

Henry E. Reeves, 31 IBLA 242 (July 18, 1977)

SPRINGS AND WATERHOLES

Where a waterhole and the surrounding land were withdrawn pursuant to both an Executive Order and an Act of Congress and reserved exclusively for use by the public before the water had been appropriated by others, the Federally reserved water right is superior to and precludes any acquisition of rights to the water by others.

Park Center Water District and The Canon Heights Irrigation and Reservoir Co., 28 IBLA 368 (Feb. 3, 1977) 84 I.D. 87

WITHDRAWALS AND RESERVATIONS--Continued

TEMPORARY WITHDRAWALS

A recreation and public purposes application must be rejected for lands temporarily withdrawn for an irrigation project to benefit Indians. Such a withdrawal is effective until specifically revoked, even though it is made on a temporary basis and has been in effect for more than 50 years.

Elko County Board of County Supervisors, 29 IBLA 220 (Mar. 23, 1977)

Applications filed for temporary withdrawals of land for proposed development under the Carey Act of 1894 must be rejected where the lands have been previously withdrawn for other purposes.

Idaho Department of Water Resources, 32 IBLA 89 (Sept. 2, 1977)

WORDS AND PHRASES

"Production." "Production" as used in all Federal oil and gas leases includes all oil and gas withdrawn from a reservoir.

Response to Feb. 17, 1976, Request from the General Accounting Office: Interpretation of Mineral Leasing Act of 1920, and Outer Continental Shelf Lands Act Royalty Clause, M-36888 (Oct. 4, 1976) 84 I.D. 54

"Production." Oil or gas that is wasted is in a category by itself, distinctly separable from "production," when it is oil or gas that is lost on the surface or in the subsurface through the negligence of the lessee, i.e., without the specific sanction of the supervisor.

Computation of Moneys Due the United States on Oil and Gas Lost as a Result of Pennzoil's Blowout, M-36888 (Supp.) (Jan. 19, 1977) 84 I.D. 64

"Agent." The word "agent," as used in 43 CFR 3102.6-1 requiring statements of authority and disclosure of interests in oil and gas lease offers by agents, does not include a son who has no discretionary authority and merely acts as his mother's amanuensis in affixing her signature on a simultaneous oil and gas lease offer entry card. Therefore, no further statement is required by the Bureau of Land Management to establish whether or not the son was an agent within the meaning of 43 CFR 3102.6-1.

Rebecca J. Waters, 28 IBLA 381 (Feb. 4, 1977)

"Cancellation" and "termination." The "cancellation" and the "termination" of oil and gas leases are separate, distinct concepts. Cancellation requires a specific act by the Department authorized by various statutes. Termination under 30 U.S.C. § 188(b) (1970) is automatic, occurring by operation of law when the lessee fails to pay his rental timely.

Oil Resources, Inc., 28 IBLA 394 (Feb. 7, 1977) 84 I.D. 91

WORDS AND PHRASES--Continued

"Practical." Under 43 U.S.C. § 1763 (19__), utilization of a nearby existing communication site is practical where the site is suitable and the expense of utilization would not be unreasonable as compared with environmental damage from a proliferation of sites.

Jicarilla Apache Indian Tribe, 29 IBLA 57 (Feb. 16, 1977)

"Common Clay." A "common clay" not locatable under the mining laws does not include clay having exceptional qualities which meets refractory and other quality standards for highgrade ceramic products or other products requiring a high refractoriness, or which is useful for certain industrial uses, such as in the oil and oil well drilling industries, outside the manufacture of general clay products. It does include, however, clay usable or used only for structural and other heavy clay products, for pressed or face brick, as well as ordinary brick, and for pottery and ordinary earthenware and stoneware. The fact industrial and technological changes may make a certain clay deposit valuable for a given major manufacturer of brick, tile and other clay products, because it meets its peculiar specifications for blends with other raw materials, does not warrant a change from Departmental precedents and a strong Congressional policy establishing that clay usable only for such purposes is a common clay not locatable under the mining laws.

United States v. Thomas J. Peck, et al., 29 IBLA 357 (Mar. 31, 1977) 84 I.D. 137

"Agent." The word "agent," as used in 43 CFR 3102.6-1, requiring statements of authority and disclosure of interests in oil and gas leases by agents, includes all persons or companies having discretionary authority to act on the offeror's behalf concerning the offer or lease.

D. E. Pack, 30 IBLA 166 (May 19, 1977) 84 I.D. 192

"Headquarters." The term "headquarters" as used in the Act of May 14, 1898, as amended, 43 U.S.C. § 687a (1970), means the usual place of business, principal office or administrative center used in connection with a trade, manufacture or other productive industry.

David A. Burns, 30 IBLA 359 (June 10, 1977)

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